

# Public Utilities

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## Regulation by Intimidation of State Commissions

How the power of politics, the press, and the legal profession is being applied to thwart the regulatory bodies in the performance of their prescribed duties.

By FRANCIS X. WELCH

**A**MERICAN lawyers, nursed on Blackstone and weaned on the "common law," invariably have a weakness in their hearts for the English system of jurisprudence.

"Over in England," most of our lawyer friends will tell us, "the courts are allowed to function without interference from the politicians or the press. Justice is swift. The law is respected. Glorification of felons by the newspapers is not tolerated. Nor are half-witted editors allowed to intimidate judges by trying controversial cases in the newspapers in order to obtain popular verdicts

long before such cases reach the court rooms."

As a result of this reverence for the law, we are told that England has less crime and less trouble with the processes of her civil courts. Her judges, many appointed for life, are like a sacred priesthood, dedicated to justice and forever withdrawn from the bickerings of politics.

Yet when these same lawyer friends of ours go into the court rooms or into the legislatures, they do little towards throwing greater safeguards around the processes of American justice. They do not try

## PUBLIC UTILITIES FORTNIGHTLY

to pass laws that would have judges appointed for life, or laws that would curb the intimidating tactics of our journalistic profession. Further than that, many lawyers when they are beaten in court will proceed to try their cases all over again in the newspapers if they can get a city editor to listen to them.

The truth of the matter is that many of our American lawyers really enjoy the régime of intimidation that hampers our judicial processes, however much they may deny it. The criminal lawyer wants sympathetic publicity—all he can get of it. It helps him to win cases. It influences juries. Most lawyers would like to be judges themselves some day, and so they look with disfavor upon a law that would take the power of judicial appointment out of the hands of the electorate, or cut down the total number of appointments.

**T**HE English system is all very well for England. But here all too many of our lawyers want publicity and politics to check the tyranny of the bench, notably when the bench rules against them.

This is especially true in the field of public utility regulation. If our American system of regulation ever proves to be inadequate (and there are those who insist that it has already broken down) there will be three classes of society who ought to share the blame: (1) the politicians, (2) the journalists, and (3) the lawyers.

They will be to blame because between them they have devised a system of regulation by intimidation which has hamstrung and frequently

voided the efforts of our regulatory bodies to exercise free deliberation in dealing with cases properly before them.

**I**T was in 1907 that New York and Wisconsin decided that the regulation of utilities was too complex for their legislatures to handle and too voluminous to be thrust upon the law courts. A commission was created in both states; a commission composed presumably of experts versed in the technique of utility operations. In the commission was vested full authority by law to deal with the regulatory problems of utilities. In theory, at least, they were to have a free hand to do just what ought to be done. They were given this power because of the very fact that the field was too complicated for the understanding of anybody else but experts.

It was a plausible theory and other states followed it in wholesale numbers until today Delaware alone of all the states fails to regulate her utilities by such a commission. But how has it worked out? Have these boards of experts been allowed to handle their intricate problems free from the influence of politics, the press, and popular pressure?

It is a safe statement that there is not a single daily newspaper in this country, having more than 10,000 circulation, which has not at one time or another told a regulatory commission how it ought to decide certain cases. If these "city-desk commissioners" stopped there, regulation would perhaps suffer only negligibly. But unfortunately many overzealous editors feel it their duty to pursue the commissioners even into their own

## PUBLIC UTILITIES FORTNIGHTLY

homes, to ridicule them with cartoons, and to attempt to dominate their decisions by threatening to do all in their power to defeat individual commissioners at the polls if they refuse to decide cases in a way which pleases the newspapers.

BESIDES the journalistic profession, of course, the utility commissioners must take advice from scores of other citizens. No state legislature is totally without a group of assemblymen who are constantly criticizing the state commissions and attempting to dictate how the board should conduct its affairs. The man on the street has caught the habit and now the average state commission, created to handle an admittedly complex field, is bombarded with a daily torrent of letters from Tom, Dick, and Harry, containing gratuitous advice (frequently accompanied by voting threats) on how to do its own work. No citizen, it seems, is so humble in his station of life that he does not presume to tell the state commission how to perform its duties.

An excellent example of this occurred in Montana in November, 1931. Certain citizens of Billings filed a complaint with the public service commission against rates charged by the Billings Gas Company. One of the citizens felt so strongly about the matter that he carried on an active campaign through newspapers,

radio broadcasting, circular letters, pamphlets, and public speeches, all designed to intimidate the commission in its deliberation upon the various phases of the proceeding. But he reckoned without considering the members of the Montana board, which is an exceptionally courageous body. It resented this conduct and registered its official opinion as follows:

"Were the commission a judicial body there is not the slightest doubt but what this conduct would be considered from a strictly legal standpoint as highly contemptuous and an attempt to improperly influence and an obstruction of justice. It appears, however, the commission is without suitable power to protect itself from this campaign of innuendo, vilification, and threats of political reprisal. The commission will not, however, be moved in its actions herein by any consideration of the political punishment that may be visited upon an elective officer by reason of a failure to meet the views of a great number of voters. The Public Service Commission Act, the decisions of the supreme courts of Montana and of the United States have charted the course that the commission must pursue in determining the reasonableness of rates and it is our purpose to follow that course in this proceeding notwithstanding that it meets with the disapproval of numerous voters of Billings and vicinity. Regulation of public utilities must not be by intimidation. Persons who prosecute their causes not on the merits, but by threatening our personal fortunes, only invite denial of their claims. We do not intimate that the present complaint is devoid of merit—upon that matter we will keep an open mind until the evidence and arguments are in and the proceeding finally submitted—but we do say that it would be regrettable if facts, sufficient to carry their own conviction, have their force in anywise diminished by the employment of extraneous and improper considerations."



**Q** "THE average state commission, created to handle an admittedly complex field, is bombarded with a daily torrent of letters from Tom, Dick, and Harry, containing gratuitous advice (frequently accompanied by voting threats) on how to do its own work."

## PUBLIC UTILITIES FORTNIGHTLY

A SOMEWHAT similar situation arose in Nebraska two years ago. There, an overzealous young attorney, not content with confining his arguments against the rates of a certain utility to the commission's hearing room or to the court room on appeal, went on a barnstorming tour up and down the counties of Nebraska. He held popular mass meetings at which he usually managed to be the principal speaker. During these meetings the young barrister referred to the fact that certain members of the state commission were seen at social functions in the company of certain utility officials. He intimated from this that improper relations existed there, prejudicial to the people's interest.

This false and petty persecution so humiliated one of the commissioners that he resigned from office "rather than suffer the most grievous insults" ever offered to him in a lifetime of honorable service. It was necessary for a fellow member of the commission to suspend the young attorney from practice before the commission.

A good example of commission baiting by the press is shown in the cartoon on page 307, which was accompanied by an editorial. The artist did not content himself with intimating that some commissions are subject to corruption, or even that a certain special commission is subject to corruption. He clearly expresses an opinion that certain individual commissioners—calling them by name—are taking orders from the "Power Trust." If this cartoonist were operating in England and cast such aspersions upon the integrity of a judge, he would be jailed for contempt of court

so fast that it would take his breath away.

So much for commission baiting by the press and the bar. Let us look at our legislators. Take the city of Washington, D. C., for an example. It is suffering by cutthroat taxicab competition. Most of the local sentiment favors commission regulation of the cut-rate hackers. Even the newspaper which published the following cartoon favors stricter regulation. The District of Columbia commission has struggled bravely to do this. It proceeded very slowly so as to be sure of its ground. It gave everybody a hearing and finally decided on a certain uniform fare which it felt would be reasonable. All taxicab operators were ordered to put this rate into effect January 10, 1932. But the new rate was somewhat higher than the existing competitive rate. Immediately a Congressman, whose knowledge of the problems of mass transportation was confined to his desultory observations as a passenger, introduced a resolution which now forbids the commission to use any appropriated funds to enforce the new cab rate.

This is typical of the sort of dictation which certain lawmakers seek (frequently with success) to impose upon a commission which is supposed to know its own job. The District commission may have all its trouble for nothing because the Hon. Mr. So-and-So, who perhaps never even so much as rode in a taxicab until a rural electorate sent him to Washington, disagrees with the commission's conclusions as to what would be best for the regulation of Washington's mass transportation system.



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### WHO'S BOSS HERE, ANYHOW?

THERE are various motives that animate the commissioner baiters. Some are just cranks who apparently have no other purpose than venting their cantankerous dispositions. The politicians find that an attack on the commission will often forestall an attack on themselves, and at the same time aid them to pose as alert sentinels of the people's rights. Newspaper editors find that a charge of incompetency against such public officials is good copy regardless of whether there is any basis for the charge or not. Some lawyers think that the publicity resulting from bitter attacks on the commission will attract clients and possibly lead to public office.

But there are those whose real motive for throwing a monkey wrench in the machinery of regulation and cooking up trouble for the commission is hard, cold cash. He is the regulatory racketeer. He may be a black-sheep lawyer, a professional "engineering expert" witness, a poli-

tician, or a journalist; but his real trouble is always the same—an itching palm.

ONE of the most flagrant examples of this type of modern piracy was recently exposed by the Indiana commission. It appears that a certain smooth-talking gentleman dropped into the office of the corporation counsel of a certain Indiana city with a "proposition." He told the municipal attorney that he felt that the city and its inhabitants were paying too much for electric rates. He believed that a well-organized attack would influence the state commission to order a rate reduction. The lawyer expressed his doubts about the case.

"All right," the visitor replied, "I'll make you a real proposition. Promise that you will pay me 25 per cent of the amount saved by any electric rate reduction resulting from a proceeding which I will institute and I'll conduct the proceeding at my expense, in my own name, and the city

## PUBLIC UTILITIES FORTNIGHTLY

will not be connected with the case in any way on the record. It will reap only the profits. That's fair enough isn't it?"

The corporation counsel admitted that it was. "All right, let us just put the agreement in the form of a contract; a personal contract, you know, that will not be made public."

This was done, and the enterprising stranger, who was not even a resident of that city much less a consumer of the electric company, instituted a complaint before the Indiana commission. He hired appraisal experts and generally prepared the whole case at his own expense. He took the chance of losing out on the reduction. It was a pure business gamble with him. The suffering consumers were only the pawns in the game.

Somehow, the wide-awake Indiana commission got wind of the concealed contract. Whereupon it dismissed the complaint as being based upon a "champertous contract, executed and concealed so as to become a fraud upon the public, the power consumers, and the taxpayers of the city." Commissioner Cuthbertson, delivering the opinion of the Indiana board, certainly called a spade a spade. Here is a passage from his order dismissing the complaint:

"There is another feature of this contract and in this entire transaction that is repugnant to every element of public policy, in that it is a recognized fact that so-called racketeering has supplanted and crowded out legitimate business in this country and is fast entering into the field of governmental activities, and that the transaction in question is conclusive evidence of the fact that such so-called racketeering is being introduced into the field of utility regulation in the state of Indiana to the great detriment of the public and a thing that this commission feels its duty to place its stamp of disapproval upon and to allow the public to be advised of their

rights in seeking redress and obtaining adequate public utility service in conformity with the law and the rights of the public to receive service from this commission in conformity with the law and without obligating themselves to divide that which is theirs among those who are introducing a system of racketeering for their own selfish gain."

**T**HERE are many such regulatory racketeers. Most commissions are familiar with the type. They go about stirring up trouble for a consideration. Sometimes they are busy creating a political issue by hailing the utilities before the regulatory boards. Sometimes they are employed by rival companies to put a local company "in bad" by stirring up adverse sentiment. Independent appliance dealers have made use of them in some states to run the utilities out of the merchandising business "in the interest of the public."

Remedies for commission baiting are not entirely clear. They must be worked out carefully and above all not hastily. An attempted gag on the press to prevent the publication of anticommission material, for example, would be worse than foolish. The newspapers have a right to express their own views on utility matters; and to differ with the commission as to the best method for regulating the utilities. But an editor exceeds the limits of reasonable liberty when he attempts to influence the decision of commissioners by appealing to the voters to turn them out of office, or by besmirching their personal reputation, or that of their families. How to stop these abuses without impairing the more important freedom of the press is, indeed, a weighty problem.

Probably nothing can be done about

# PUBLIC UTILITIES FORTNIGHTLY

## The Qualifications Imposed upon the Business of Representative Practice before State Commissions:

ALABAMA	<i>Probably restrict- ed to attorneys</i>	NEVADA	<i>None</i>
ARIZONA	<i>None</i>	NEW HAMPSHIRE	<i>None</i>
ARKANSAS	<i>No data</i>	NEW JERSEY	<i>Attorneys</i>
CALIFORNIA	<i>No data</i>	NEW MEXICO	<i>Qualified persons</i>
COLORADO	<i>None</i>	NEW YORK (P. S. C.)	<i>Probably restrict- ed to attorneys</i>
CONNECTICUT	<i>None</i>	NEW YORK (Trans.)	<i>Probably restrict- ed to attorneys</i>
DISTRICT OF COL.	<i>None</i>	NORTH CAROLINA	<i>None</i>
FLORIDA	<i>None</i>	NORTH DAKOTA	<i>No data</i>
GEORGIA	<i>None</i>	OHIO	<i>None</i>
IDAHO	<i>None</i>	OKLAHOMA	<i>No data</i>
ILLINOIS	<i>See p. 329.</i>	OREGON	<i>None</i>
INDIANA	<i>No data</i>	PENNSYLVANIA	<i>None</i>
IOWA	<i>None</i>	RHODE ISLAND	<i>None</i>
KANSAS	<i>No data</i>	SOUTH CAROLINA	<i>Ethical standards of the bar</i>
KENTUCKY	<i>No data</i>	SOUTH DAKOTA	<i>Citizens</i>
LOUISIANA	<i>None</i>	TENNESSEE	<i>Attorneys</i>
MAINE	<i>None</i>	TEXAS	<i>None</i>
MARYLAND	<i>None</i>	UTAH	<i>None</i>
MASSACHUSETTS	<i>None</i>	VERMONT	<i>None</i>
MICHIGAN	<i>None</i>	VIRGINIA	<i>None</i>
MINNESOTA	<i>None</i>	WASHINGTON	<i>None</i>
MISSISSIPPI	<i>No data</i>	WEST VIRGINIA	<i>None</i>
MISSOURI	<i>Attorneys</i>	WISCONSIN	<i>None</i>
MONTANA	<i>Citizens</i>	WYOMING	<i>None</i>
NEBRASKA	<i>None</i>		

## PUBLIC UTILITIES FORTNIGHTLY

the meddling politician or the publicity-seeking lawyer except, perhaps, to educate the public so that they may in time be ignored as they should. The menace of popular pressure might be removed in part, at least, by appointing commissioners instead of electing them, and by making their term of office a substantial and specified number of years. This would certainly give many commissions more courage of their convictions.

**B**UT something can and something should be done about the regulatory racketeers—those who have no other interest in regulatory litigation than the making of money—those whose calling in life seems to be stirring up trouble for a profit. Chairman Paul A. Walker, of the Oklahoma commission, recently made a good start in this direction.

It seems that various organizations known under such names as "adjustment bureaus," which undertake to handle complaints against utilities before the commissions for a profit or upon a contingent fee basis have been springing up all over the country. There is a very active one in Illinois which, in addition to handling complaints in such a manner, has even put out printed material attacking the commission itself.

When such organizations, which are rarely composed of attorneys, commenced to make a business of practicing before the Oklahoma commission, Chairman Walker issued a sharp warning against the operation of all so-called "adjustment bureaus" which charge fees to obtain from utilities refunds which customers would ordinarily receive anyway.

Except in three or perhaps six states, practice before the regulatory commissions is not restricted to attorneys. This is probably in accord with the spirit of the regulatory acts in the different states. It was doubtless the intention of the legislatures that representation before these tribunals of the people should not be restricted to conform with the formalities of court procedure.

**B**UT is it really wise to impose no qualifications at all upon the right to make a business of practicing before the commissions? As the matter now stands in most states, anyone, whether he is foreign born or a citizen, whether he is an adult or a minor, whether he can read or write, and (for aught that appears to the contrary in commission regulation) whether he is sane or insane, he has a right to appear and practice in representing others before the commissions. It is, indeed, a disturbing thing to reflect that most of our commissions have no power to prevent ex-convicts, persons under indictment or released on bail, persons paroled from insane asylums, and illiterates, from appearing before them and practicing for profit as representatives of interested parties to commission proceedings. Surely, some qualifications of moral character, as well as reasonable familiarity with the subject matter at hand, could safely be imposed without destroying the informal spirit of regulation. Chairman Hugh Williams, of the New Mexico commission, tells us that his commission has followed this line of procedure. He says:

"This commission has not issued any

## PUBLIC UTILITIES FORTNIGHTLY

rules or regulations concerning the practice before us, nor have we restricted the business of practicing to any certain parties.

"The commission has always taken the attitude that any citizen whose interests are affected may appear before this commission in behalf of himself or any group; however, in rate matters, practice before the commission is restricted to those who are qualified to testify or represent the parties involved."

ON page 309 is a nearly complete list showing the qualifications imposed upon the business of representative practice before the regulatory commissions of the states:

It will be noticed that practice before both New York commissions is described as "probably restricted to attorneys." This means that while these two commissions have not themselves formally adopted regulations governing the qualifications of those who practice before them, there is a general state law (§ 270 of the Penal Code) which forbids under penalty any person to make a business of practicing law unless he or she has been admitted to the bar. There is good reason to suppose that regular representative appearances for a profit before the commissions would be construed as making a business of practicing law. A similar situation exists in Alabama.

In South Carolina the rules of the commission provide as follows:

"Any party may appear and be heard in person or by agent or attorney. All persons appearing in such proceedings must conform to the standards of ethical conduct required of practitioners before the courts of the state. Failure to conform to those standards will be ground for declining to permit appearance as attorney in any proceeding before the commission."

Apparently the South Carolina commission does not insist that those who practice before it have all the legal learning of the members of the bar, but that they should, at least, have a concept of professional ethics equal to the standards of the bar. This would, of course, eliminate commercial adjustment bureaus since no ethical bar would permit the practice of law by incorporated organizations.

The Illinois Commerce Commission has recently made an investigation of some of the groups which have been practicing before that body in a representative capacity; subsequently it drew up a "Code of Ethics" (which may be found on page 329 of this issue of PUBLIC UTILITIES FORTNIGHTLY), which appears to be the first attempt made by any state commission to define in specific terms the qualifications of its practitioners. It is a step in the right direction.

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### How Can the "Value of Service" Be Computed?

When the Wisconsin commission recently issued its now famous temporary order which reduced the telephone rates in that state by 12½ per cent, on the ground that telephone service was no longer as valuable to the user as it was before the depression, it raised some basic regulatory questions that have taken the whole utility industry by the ears. Among them is the question as to whether or not a state commission has the power to compel a utility company to render service at a loss if that service (in the opinion of the commission) is not worth what is charged for it. In the preceding number of this magazine WILLIAM A. PRENDERGAST commented upon this Wisconsin order, with special reference to the "economic emergency" as a factor in rate making. In the coming issue of this magazine, HENRY C. SPURR will analyze the "value of service" features of the order, and review court and commission decisions that help define this term.



PROPER AND IMPROPER

## Invasions of Regulation Into Utility Management

Where the line should be drawn between the authority of the state commission and that of the corporation's own executive body—as revealed in court and commission rulings.

By WARREN WRIGHT

**T**O speak of incentives to good management of public service industries is to suppose that the owners are free to choose between different policies. How far this freedom is possessed, in spite of regulatory powers of the states, can be partially determined at least by an examination of some of the court and commission decisions on the subject.

**I**T is apparent that no definite line can be drawn to mark the boundary between regulatory authority and the discretion of the management. Whether a specific exercise of authority falls on one side of the boundary line or the other must be determined by the situation in the particular case. It does not follow, however, that no general principles can be useful, for certain tendencies appear which may be helpful in the solution of current problems.

Some persons feel that regulation

is bound to cover all phases of public utility business—even the extremely technical aspect—as time goes on. This feeling probably arises from the belief that public service companies will be removed further and further from a competitive market, plus a fairly sublime faith that commissioners will be capable of keeping pace with the growth in the industry. However that may be, at this time definite technical standards and general agreement as to other tests of managerial powers are plainly lacking in practically every state.

Public service industries are unlike ordinary enterprises. The demand for public utility service is more or less fixed or constant so that increasing costs and higher rates, if allowed, do not quickly penalize poor management by decreased sales. Likewise decreasing costs and lower prices do not quickly or for some time reward efficient management in the form of

## PUBLIC UTILITIES FORTNIGHTLY

increased sales. Unwise regulation is likely to force rates to move out of close relations to actual costs, sometimes for and sometimes against public interest. Because of these conditions, regulative commissions appear to be more or less the main influence in determining the economic welfare of utility companies on the one hand, and in preserving public interest on the other.

Freedom of management from state or commission control seems a contradiction in terms, but there are degrees of control so widely apart as to lend substance to the judicial opinion that management still possesses certain rather definite prerogatives, the importance of which is not to be lightly regarded.

WHAT appears to be a decided drift toward further narrowing the field of free utility management has been rather seriously neutralized by a strong movement among utility managers to create holding companies. The complicated accounting and legal intricacies connected with these super-parental-corporations threatens the efficacy of present administrative control over utility operating companies to an alarming degree according to many sincere friends of public and utility welfare.

Now looking at what has actually taken place, let us first briefly consider some examples of commission control which have had the apparent effect of narrowing the freedom of utility management.

IN one instance the Nebraska commission requested that a manager be appointed for a small rural telephone company to guarantee continu-

ance of past efficient operation, and the commission expressed its willingness for the salary of such an official to be paid for by subscribers. This would be accomplished by charging the salary to operating expenses.<sup>1</sup> At another time the same commission, admitting its lack of control over wages unless the latter became oppressively burdensome on ratepayers, again requested that wages be raised, this time to permit adequate compensation to a woman serving on a 24-hour schedule in a rural exchange. Subscribers had expressed their willingness, even their eagerness, to pay for the added expense, and the commission thereupon took the initiative and suggested that the change be made.<sup>2</sup>

Another example of the tendency for certain commissions to suggest improvements, despite lack of specific authority to order them to be carried out, is exhibited by the Maine commission in requesting a salary advance for an overworked general office clerk who was to be saddled with *quasi* managerial duties. Concern was displayed lest service deteriorate should this official be paid inadequately.<sup>3</sup>

Free services rendered to company officials by a water company in lieu of proper salaries were ordered discontinued, but the commission refrained from recommending that

<sup>1</sup> *Re* Nuckolls County Independent Teleph. Co. P.U.R.1921C, 588, 593.

<sup>2</sup> *Re* Lincoln Teleph. & Teleg. Co. (1927) P.U.R.1928B, 533. Management here was pleased to receive the advice of the commission, without fear of dangerous lessening of its immunity from control. In law, the commission probably was acting beyond its powers.

<sup>3</sup> *Re* Andover Water Co. F. C. 668. Here, again, ratepayers would pay the added expense, but rightly so.

## PUBLIC UTILITIES FORTNIGHTLY

salaries be adjusted.<sup>4</sup> Huge salaries must be paid, if at all, from fair return, not out of operating expenses.<sup>5</sup> Control exercised in the above cases is obviously indirect in application though direct in effect. Discretion in such matters is still the prerogative of management, though where the companies are small and management is backward commissions often find favorable receptions to their friendly recommendations for improving the service. Managerial immunity is narrowed, but not irreparably, and probably is not regarded as further restraint either by state authorities or by management. Coöperation of this kind deserves commendation and will probably grow in quantity and importance, at least for so long a time as weak utility units continue to operate.

WHEN reports of commission engineers disclosed that great economies were possible in purchasing, claims, and records, in addition to possible economical reorganization of internal telephonic communications, the California commission offered a pro-

<sup>4</sup> The commission interferes only when the "utility should attempt to absorb its revenues, with an excessive salary list." *Logan v. Bismarck Water Supply Co.* (N. D. 1922) P.U.R.1923B, 450.

<sup>5</sup> *Re Great Western Power Co.* (Cal.) P.U.R.1923C, 545.

gram of reforms all of which were adopted by the utility company.<sup>6</sup> Likewise, where several companies and various municipal and state bodies were at loggerheads over certain track relocations and construction of a union depot, the California commission, apropos of being asked to interfere, remarked:

"while we realize that the railroad commission does not have jurisdiction to make an order compelling the complete execution of this plan, we nevertheless are of the opinion that it is the duty of public authorities to be constructive in suggestion."<sup>7</sup>

Of course, so far as recommendations concerning immediate safety and service are concerned, commission suggestions carry the threat of legal enforcement.

DIRECT growth of public control and consequent limitation of managerial powers and immunities is evidenced in recent Michigan experience. The Michigan Supreme Court supported the commission of that state in ousting the American Telephone and Telegraph Company from Michigan in respect to its contract with the Michigan Bell Telephone Company for management services. The fiction of dual corporate entities was disre-

<sup>6</sup> *Re Los Angeles R. Corp.* (Cal. 1921) P.U.R.1922A, 66.

<sup>7</sup> *San Jose v. Southern P. Co.* P.U.R.1918E, 763, 780.



**Q** "SOME persons feel that regulation is bound to cover all phases of public utility business—even the extremely technical aspect—as time goes on. This feeling probably arises from the belief that public service companies will be removed further and further from a competitive market, plus a fairly sublime faith that commissioners will be capable of keeping pace with the growth in the industry."

## PUBLIC UTILITIES FORTNIGHTLY

garded in this case, in order to compel the parent and subsidiary companies to prove the reasonableness of certain management fees by recourse to the cost records of both companies, particularly those of the holding company.<sup>8</sup> Management of operating units will be forced to show cause why their contracts with parent companies are conducive to the best interests of the operating organizations. In this summary fashion, the burden of proof is placed upon management in cases involving corporate-fiction relationships to show the latter reasonable. Nominal regulatory control becomes actual supervision with authority to order fees paid from surplus or not at all in case no proof is available of the cost of services rendered by the parent utility company.<sup>9</sup>

THE United States Supreme Court has recently decided that in judging the fees paid by operating companies to parent corporations commissions may use the "cost test" and hold the utility's management to the proof of reasonableness on that as well as other bases.<sup>10</sup> Managerial dis-

cretion is now restricted to a smaller field of choice, limited by cost data available, and holding companies are partially subjected to state control. Nor are fees for management services supplied by holding companies, or other management organizations, to be accepted merely because they are consonant with actual costs of rendering them. Unless the services of this nature are shown to be of definite importance to the operating companies, they will not come from expenses which are paid by ratepayers.

These few cases indicate that these are day-to-day incidents in regulation and judicial review which seem to tend toward closer administrative control of public service companies.

Let us now turn to some situations which can be used to point out that in many ways management still possesses immunities from such control.<sup>11</sup>

A RAILROAD need not install a weighing scale in a certain town, even though fifty-four other competitive points have been so favored. A commission cannot force the railway to equalize competition among fifty-five towns by scales installation, especially when regard is had to the intention of the company to effect the same result by removing all scales. To the United States Supreme Court the scales were conveniences not directly related to the duty of the railway to serve adequately-

<sup>8</sup> People ex rel. Attorney General v. Michigan Bell Teleph. Co. P.U.R.1929E, 27. The operating management is no longer presumed to be exercising due discretion, in Michigan, in obligating itself to pay over certain fees for holding company services unless it can be proved, by cost analyses, that a fair bargain has been struck.

<sup>9</sup> For discussion of this matter, see Warren Wright, "Management Fees of Public Utility Holding Companies," *Journal of Land & Public Utility Economics*, November, 1930.

<sup>10</sup> Smith v. Illinois Bell Teleph. Co. (1930) 282 U. S. 133, P.U.R.1931A, 1. Herewith the ruling of the Southwestern Bell Cases is apparently superseded. [259 U. S. 318, 66 L. ed. 961, P.U.R.1922D, 793; 262 U. S. 276, 67 L. ed. 981, P.U.R.1923C, 193.] In these cases management discretion about fees was treated as practically immune from regulation.

<sup>11</sup> No attempt is to be made to weigh cases of stricter control over against cases of no control, or immunity from regulative supervision in order to be able to say that the tendency is observedly either away from or toward greater immunization. The courts have, in general, permitted wage regulation in the utility industry but the power is little used. Of course, wages can be affected indirectly by rate adjustments.

## Restrictions on the Fees Paid to Holding Companies

**T**HE United States Supreme Court has recently decided that in judging the fees paid by operating companies to parent corporations commissions may use the 'cost test' and hold the utility's management to the proof of reasonableness on that as well as other bases. Managerial discretion is now restricted to a smaller field of choice, limited by cost data available, and holding companies are partially subjected to state control."



ly all who come.<sup>12</sup> It would seem, however, were conditions to change, that what was a mere convenience might easily become a necessity to shippers, and management might in such a contingency be controlled in its choices relative to installation.

**W**ISCONSIN imposed upon sleeping car companies a prohibition against letting down unengaged upper berths when the corresponding lower berths were occupied, and the Wisconsin Supreme Court upheld the rule, only to be overruled by the United States Supreme Court.<sup>13</sup> The Fed-

eral judiciary expressed the opinion that there was no good reason for interfering with the right of management to conduct its own business save as the health, safety, or convenience of users of railway facilities were affected. The decision uses the test of reasonableness—what is necessary for the comfort of the traveler as against the general presumption in favor of management knowing best about its own internal affairs. Had a strong demonstration of ill-effects to occupants of lower berths been made, opinion might well have been otherwise. Property rights of utility owners are thus protected from unreasonable restraints, the court obviously seeing no great public advantage outweighing interference with private pursuit of gain.

**C**ONTRAST the Wisconsin case, decided in 1915, with the following opinion expressed by the Interstate Commerce Commission:

"We are not the managers of railroads and we have no desire to substitute our judgment . . . for that of the railroad executives. We do not conceive it to be our

<sup>12</sup> Great Northern R. Co. v. Minnesota, 238 U. S. 340, 59 L. ed. 1337, P.U.R.1915D, 701. Factors to be considered would be: cost items, whether the railway was better situated to install scales than were shippers; competitive conditions along the right of way; farmer-dependence, and whether or not freight rates were high enough to compensate management.

<sup>13</sup> Chicago, M. & St. P. R. Co. v. Wisconsin, 238 U. S. 491, 59 L. ed. 1423, P.U.R. 1915D, 706. This was an early case, and is chiefly important as showing that proof-burdens rest upon the state when attempting to control discretionary policies of management even in a regulated industry. Perhaps, too, the majority members of the supreme tribunal had never experienced the discomfort described above.

## PUBLIC UTILITIES FORTNIGHTLY

duty nor within our power in an investigation of this kind to determine whether or not the container service should be inaugurated upon any particular railroad or in any particular utility."<sup>14</sup>

This pronouncement was made this year, and is to be compared with other instances where the same commission has seen fit to interfere with management discretion in regard to repair work and new construction. It is doubtless fair to suppose that interference in such matters is rarely occasioned save in situations where errors of management are palpably subversive of public interest in efficient railway operation.

WHEN a telephone company is supplied with directories at no cost to the company by an advertising agency, the telephone company cannot be restrained from furnishing these, and no other, directories to local subscribers even though the latter may resent the presence of foreign advertisements in the directories. Local merchants were free to insert their advertisements in the same books and made use of the privilege in order to attract trade from surrounding towns. In this connection the commission felt that the statutes did not confer upon it the general management of public service companies.<sup>15</sup> If it could be shown that such practices actually led

to discrimination against local merchants to the end that their business interests were seriously jeopardized, a different reading of the statutes might well ensue. Local dealers in fact were not seriously affected by competitors in the city wherein the advertising agency sold its largest amount of space.

IF a utility company reinstates an old debt, the Wisconsin commission will not interfere. The latter, will not, however, be lenient about requests for increases in rates made necessary in part by the added burden of reinstatement, particularly when salaries are abnormally high.<sup>16</sup> Were capitalization as closely controlled in Wisconsin as it is in Massachusetts, the incurring of new debt burdens might have been held up indefinitely until commission permission was received for funding operations.<sup>16a</sup>

IF a railroad management selects one item of an improvement program as against several others upon which to commence work, choice lies entirely within managerial discretion. But such freedom from commission control surely depends upon peculiar conditions where the public may be equally well served by any building opera-

<sup>14</sup> 173 Inters. Com. Rep. 377, 444 (1931). Technical decisions are pretty much left to managerial discretion, at least so far as commissions are satisfied with the results of such a policy measured in terms of operating efficiency. Public practice in these matters is liable to change at any time. Legal points herein involved remain to be analyzed at another time.

<sup>15</sup> Fond du Lac Business Men's Assn. v. Wisconsin Teleph. Co. (1909) 4 Wis. R. C. R. 340. The commission pointed out that the main trade rivalry was between local dealers and with the mail order houses selling out of Chicago.

<sup>16</sup> *Re* Madison R. Co. (Wis.) P.U.R. 1928C, 842. It was recognized by the commission that reinstatement of the old obligation would likely injure creditors and preferred shareholders. Were such injury to result in weakening the financial position of the company so as to affect service and rates, the commission probably would have objected more strenuously.

<sup>16a</sup> It must not be forgotten that any actions by a commission are liable to be tested in the state courts in attempts to prove them beyond statutory intent; also, such actions may be reviewed by the Federal courts and there be tested by the Supreme Court's interpretation of reasonableness viewed from the standpoint of "due process."

## PUBLIC UTILITIES FORTNIGHTLY

tions.<sup>17</sup> Immunity in this case is very plainly a permitted condition, for the commission has judged the probable effects of the adoption of several lines of procedure so far as improvements were concerned. Only as technical standards are developed, and as commissions become more fully manned and more capable can we expect managerial freedom in such situations to become narrowed by the exercise of public authority.

A STREET car company cannot be compelled to invest in a rubber insulation device against the judgment of its officials. In this case the complainant against the noise of street car operation was himself the possessor of the patented rubber noise-reducer. Were the complainant a fair representative of popular opinion, another decision might have been handed down by the Illinois commission.<sup>18</sup>

A MARYLAND court was much averse to an attempt by the commission to prevent the purchase of four operating companies by a Delaware holding corporation.<sup>19</sup> And the New York commission was not inclined to prevent a similar purchase arrangement. In both cases obvious

operating economies were to be realized, and in the New York transaction the sellers were favorably known to the commission as efficient utility operators who always made known all details of all their business dealings in utility properties.<sup>20</sup> In both cases management showed its willingness to prove wise business judgment.

A TELEPHONE company can justifiably refuse to serve a hotel if the telephone wires in the conduits of the building have been pulled by any persons other than regular telephone employees. The court, in overruling the commission's order to render service, was of the opinion that past practice should be continued; that to allow wiring by nontelephone employees opened the door to the possibility of inferior installations; that the strike of the union workers on the hotel job was directed in a coercive manner to the end of forcing the telephone company to unionize or stop putting in its own internal wiring; and that no great danger to public interest was inherent in such practice compelled by telephone companies; but, on the contrary, public interest would be safeguarded by permitting

<sup>17</sup> "A utility may be presumed to know its own needs better than the commission does." *Hartford v. New York, N. H. & H. R. Co.* (Conn.) P.U.R.1928E, 556.

<sup>18</sup> *Maginn v. Chicago Rapid Transit Co.* (1928) P.U.R.1929B, 164.

<sup>19</sup> *Maryland Circuit Court* (2), P.U.R. 1928E, 854, 862.

<sup>20</sup> P.U.R.1926A, 855 ff. "The commission is not the financial manager of the utilities, nor may it substitute its judgment for that of the board of directors." When management attempts to neglect its obligation to point out economical reasons for selling to holding groups, we may support the commissions in refusing permission.



**Q** "DISCRETION in such matters (as wages) is still the prerogative of management, though where the companies are small and management is backward commissions often find favorable receptions to their friendly recommendations for improving the service."

## PUBLIC UTILITIES FORTNIGHTLY

telephone companies to require that installations be done in a manner prescribed by them and executed by whomsoever they chose.<sup>21</sup>

In defense of the attitude taken by the Massachusetts commission and by the hotel management, it must be said that an awkward situation was created.<sup>22</sup> The hotel was ready to receive guests save for the single feature of telephone service; wires were admittedly well installed and control over them would pass to the utility company once connections were made. Many persons would say that the obstinacy of the utility was foolhardy in view of the unusually complicating factors in this case. Burden of proving the utility policy unwise is left squarely upon the public and its commission, which is quite in harmony with the general history of utility regulation. Possibly the public would be best served by a solution of similar problems which permits anyone to install wiring so long as adequate standards set up by commission and company are met. In such an event, telephone management suffers some deprivation of privilege in order to facilitate service

connections, for telephone service on new and altered wiring is often slow.

THE last case to be noted concerns the political activities of four utilities in California.

In an effort to insure the defeat of a proposal to municipalize the public service properties of Los Angeles, these companies expended funds and assigned utility employees to campaign against the threat of municipal ownership. The California commission investigated, on its motion, the activities of the public service companies in the campaign; but, upon discovering that service was unimpaired and no extra costs were foisted upon ratepayers, the opinion was expressed that the "commission cannot usurp the duties of the board of directors . . . nor circumscribe its judgment . . . nor interfere with the internal management of the utility."<sup>23</sup> The expenses of political efforts come from surplus, not operating expenses, and were thus paid for by stockholders, except in whatever degree ratepayers received less service than normally for their payments.

MASSACHUSETTS stands alone in its efforts to maintain a balance between capitalization and the value of properties dedicated to public service by private corporations. Were the balance perfect, rates could be rather simply determined on the basis of rate of return upon shares. Even in

<sup>21</sup> Public interest dictates that, in all cases where reliance is placed on managerial discretion, commissions keep actively in touch with the operating results of choices made by operators. In many states the commissions are powerless to usurp the powers of management even in situations where interference seems socially expedient. Indirect methods are open to commissions in attempts to guide managerial policies and are discussed later in this paper.

<sup>22</sup> *New England Teleph. & Teleg. Co. v. Department of Public Utilities*, 262 Mass. 137, P.U.R.1928B, 396. "No general conditions of public necessity are shown . . . it goes beyond the reasonable limit of public control," the Massachusetts Court of Appeals said. It is probably true that so far as technical essentials were concerned, there was no good reason for the telephone company to refuse to connect. In so far as wiring is profitable a reason appears.

<sup>23</sup> P.U.R.1930E, 478. Several members of the commission asked for the names of the employees who were delegated to political activity and the amounts of money so spent but they were outvoted so that no reports were transmitted by the companies. It was thought that a corporation's management owed it to stockholders to defend their interests as above.

A Utility's Expenditures for Political Purposes  
Cannot Be Charged to Operating Costs



**"T**HE California commission investigated the (political) activities of the public service companies in the campaign; but, upon discovering that service was unimpaired and no extra costs were foisted upon ratepayers, the opinion was expressed that the 'commission cannot usurp the duties of the board of directors . . . nor circumscribe its judgment . . . nor interfere with the internal management of the utility.' The expenses of political efforts come from surplus, not operating expenses, and were thus paid for by stockholders."

Massachusetts, however, no direct regulation is exercised over short-term (one year and less) borrowing by utility concerns, so that the policy of restricting capitalization to minimize capital burdens with the tendency for rates to adjust themselves more or less automatically is in some measure discounted by the removal of securities of certain durations from state control.<sup>24</sup>

The absence of restrictions upon the ability of utilities to float short-time indebtedness has led many companies to depend upon such loans to raise capital for improvements and extensions. When these loans mature the utilities, having expended the capital on fixed assets and having been unable in such a short time to earn

enough to meet these obligations, have appealed to the regulatory authorities for permission to fund the indebtedness in bonds or stocks. Compliance is forced upon the commission by the necessity of preventing any disruption of service should debtors force collections. Capitalization is forced out of line with assets, in some cases, because management is relatively uncontrolled in its short-term borrowing and spending. Rates may be increased to provide suitable earnings records for securities to maintain their market standing and prevent the cost of money to the utilities from rising considerably. One is led to remark that regulative supervision of any securities fails unless that supervision is extended to all securities. The commission does, of course, supervise the actual operation of the utility companies and can indirectly discourage short-term borrowing by suggestion, by reluctance in raising rates, or by prohibition of capital appropriations which seem wasteful of resources.

<sup>24</sup> Victories of the utilities in the courts have frequently given stockholders considerable profits. Regulated utilities show no evidence of being starved for capital, the railroads excepted.

Acknowledgment is made by the writer to I. R. Barnes, whose excellent book, "Regulation of Public Utilities in Massachusetts," is published by the Yale University Press (1929).

## PUBLIC UTILITIES FORTNIGHTLY

COMPANIES may conceivably distribute surplus as dividends, borrow these funds on short-time obligations, and, finally, repay such loans by funding them through sales of securities, all of which in effect amounts to capitalizing reinvested earnings.<sup>25</sup> Inasmuch as such surplus earnings are contributed by ratepayers it has seemed unfair to compel consumers to pay a fair return on their own investments. Other ways of handling such earnings are to allow them to be capitalized but to credit the return on them to operating expenses, thus reducing the burden upon ratepayers of maintaining the properties. This plan has the distinct advantage of inducing progressive development of the properties and offers one kind of reward to efficient management which is able to make a profit on rates which in theory permit none.

A WARNING against rash assumption that control over short-time financing is called for by the above considerations must be noted. Conditions may be such, at any time, that only short loans are economical; and, were the commission empowered to pass on all borrowing, financing might be hampered by the red tape of administrative procedure with the possibility that money might be unnecessarily costly if the propitious market opportunity slips away before financing can be completed. One argument against closer commission

control surely is, in effect, that such control may well be cumbersome and if followed out to the letter of the law may put the operating companies in the difficult position of serving a public which is so slow to make up its mind as to make efficient operation impossible. Most commissions are overworked now; and until some rather sweeping changes are effected in personnel and procedure it remains clear that managerial immunity from control in short-term financing promises more saving than any fairly conceivable public loss thereby involved. After all, the assumption may be made that utility operators do know more about their business than any commission can hope to know, especially in relation to practical details of operation. This does not deny that management is chiefly concerned with results which will add to the income of stockholders. It is one thing to theorize about extensions in commission powers; it is another thing to enact the legislation necessary or to change judicial interpretation of existing statutes.

IN conclusion it may be stated generally that management of public service companies is unrestrained in any direct way save within the bounds set by the duty to render adequate service at fair rates although at no time is this duty clearly defined; but there seems to be no phase of utility operations which cannot ultimately be brought under the purview of the commission once a particular business practice is tied up definitely with public need. Whether it is or not in the last analysis is a question for the courts to decide.

<sup>25</sup> It is debatable whether surplus in the sense used above ever logically accrues to regulated industries, assuming efficient public control. There are times when assets appreciate in harmony with general economic conditions and give rise to surplus. It must be remembered, however, that returns figured on total investment permit the effect of equity trading with large returns to shareholders.



## What the Coming Congress Will Do for—and to—the Utilities

The outstanding problems in regulation and legislation that will engage the attention of the lawmakers during their coming session—as reflected among the observers at the nation's capital.

By AARON HARDY ULM

**I**N the capacious laps of the investigatory gods the problem of legislating, so far as the public utilities are concerned, was left by the Seventy-second Congress on adjournment of its first and long session. The mills of those gods will continue to grind out grists of detail to fill more tomes of facts and findings so long as the gods of politics and of public opinion flounder in a maze of confusion about what Congress should do about major features of the so-called "public utilities problem." It is possible that current political contests will result in a clarifying opinion concerning some of those features. But, if so, it is not apt to be so conclusive as to make a great change in the mood thereto of the present Congress.

That mood, as displayed at the recent long session, was one of inaction toward the major phases of questions that have to do with the utilities.

**O**NLY one item of substantive legislation relating directly to the utilities was adopted at the session of Congress that ended in midsummer. It is the one by which a 3 per cent tax, to be paid by consumers, was put on sold electricity.

There may be a reconsideration of that item at the short session to begin in December. But, aside from that item, the probabilities weigh against enactment by the present Congress of any utilities legislation of importance.

**O**F the 20,000 or more bills and resolutions put forward during the long session, most of them still pending, only three or four related importantly to public utilities. There were, of course, the customary bills providing for doing something permanently with the Federal government's power-nitrates establishment at Muscle Shoals. But the deadlock on that problem continues and it is not

## PUBLIC UTILITIES FORTNIGHTLY

likely to be broken until the line-up of control changes. Other bills relating directly to the utilities did not reach even the stage of hearings before committees. It is unlikely that, as they stand, any of them will be of importance at the next session, though the subject matter of some of them may be.

**T**HERE were hearings on a few bills of indirect bearing upon the utilities. The most important of these are measures that would limit the jurisdiction of United States district courts over suits growing out of actions by state regulatory bodies and over suits now reaching those courts because of diverse citizenship of litigants. One of the measures was reported favorably by the Senate Judiciary Committee. It refers to appeals directly from state regulatory bodies to the Federal courts. The measure is sponsored by Senator Hiram Johnson of California. It may come up for action at the short session of Congress, in which case there probably will be merged with the consideration of it a discussion and perhaps action on the companion bill, by Senator George W. Norris of Nebraska, relating to suits involving diverse citizenship. A purpose of the measures is relief of congestion in many of the Federal courts, but the bills are aimed principally at utilities and carriers which often now cause litigation over actions by state regulatory bodies to be handled altogether by Federal instead of state courts. The proposals have the endorsement of the National Association of Railroad and Utilities Commissioners. Only questions of jurisprudence are involved.

Thus the body of positively—and seriously—proposed public utilities legislation pending at the Capitol in Washington is rather small and somewhat vague. But the content of the assemblage of questions within the range of potential action by Congress continues to expand. Those questions are divisible into something like the following generic groups:

1. Federal taxation of electric current.
2. Holding companies.
3. Interstate transmission of energy.
4. The St. Lawrence Waterways project.
5. Administration of water power under Federal jurisdiction.
6. Muscle Shoals.
7. Interstate and international transmission of communications by electrical methods.
8. Construction projects.

The foregoing arrangement is in line with the seeming eminency of legislative actions, except that ratification of the treaty providing for the St. Lawrence Waterways project might belong nearer the top of the list.

**W**HAT, if anything, is done at the short session regarding the 3 per cent tax imposed recently on electric current probably will depend a good deal on whether conditions make necessary the passing of a new tax act at that time.

The electric current tax is already a subject of political controversy in numerous contests for places in Congress, but changes resulting from most of those contests will not be effective until March 4th next and not actively effective until the Seventy-

## PUBLIC UTILITIES FORTNIGHTLY

third Congress meets. The last session of this Congress can run through only three months' time, which will make it difficult for other than urgently required legislation to be enacted.

Several outstanding leaders, like Senator Reed Smoot of Utah, who is chairman of the Senate committee which handles tax matters, doubt that a new tax act will be required of Congress at the short session, in which case little if anything is likely to be done as to single items of taxation. The general belief in Washington is that, if anything is done about it, the 3 per cent tax on electric current will be repealed. If that is done in connection with the adoption of a new tax act, it is not unlikely (according to opinion at the Capitol) that it and perhaps several other items will be supplanted by some kind of general sales tax to be collected from manufacturers, including, no doubt, the producers of electricity. Federal tax questions will be determined during, at least, the next year by business conditions as much as by political currents.

**A**LL told, the holding company section of the national assemblage of questions dealing with the utilities occupies biggest place in the investigatory and perhaps the political setting. A total of four Federal agencies of inquiry are burrowing into that section, which is the only one, aside from the St. Lawrence Water-

ways Treaty, that is currently the subject of extensive investigating for legislative ends.

**F**IRST, there is the Federal Trade Commission, which is now delving into the holding company phase of the vast and inclusive inquiry it is making of the entire electric power industry. It is stated unofficially that the commission's work thereon will not come to a close before the end of next year, when the entire inquiry will have run through a period of about six years. While the total of funds available to the commission is much smaller than formerly, a sum of \$300,000 was designated by Congress as for the expenses of the power inquiry during this fiscal year. Members of the commission state the amount is sufficient for what they propose to do. Power investigating plans for the fiscal year were outlined by a representative of the commission to a committee of Congress, as follows:

"It (the investigation) is limited to the more important holding companies and to their subsidiary holding companies and service companies and a few of their operating public utilities. It includes a general survey by engineering experts of the efficiency of operating management and of plant and equipment, which is especially pertinent to the question of the value of holding company management."

There would be hearings, it was stated, on about forty-five companies. The investigation as a whole was described as "right in the middle of the road." The committee was informed



**Q**"THE holding company phase of the electric power question seems to have taken precedence, at least for the time being, of proposed Federal regulation of interstate transmission of current."

## PUBLIC UTILITIES FORTNIGHTLY

that the printed record on the propaganda phase of the inquiry filled 3,788 pages of printed matter, exclusive of a vast volume of exhibits, and that the record on the organization and ownership phase fills 6,939 pages, with an additional 5,400 pages in the course of printing.

**S**ECOND, the Federal Power Commission seems to have finished a more restricted inquiry made by it, by orders of Congress, of the holding company phase of the electric power industry. Its findings are to the effect that "public control of holding companies in the power utility field is absolutely necessary to the public interests."

**T**HIRD, Congress is looking through two committees into the same subject. The House Committee on Interstate and Foreign Commerce has launched an inquiry into the spheres of pipe line and gas as well as of electric power holding companies. The details of the investigating are handled by Dr. Walter M. W. Splawn, who conducted for the committee exhaustive researches as to ownership of the railroads and of holding companies in the railways sphere. That as to holding companies was made the basis of a bill, put forth by Representative Rayburn of Texas, chairman of the committee, providing for Federal regulation of railway holding companies, but the measure advanced no farther than hearings on it. This section of the holding company question is likely to be considered as a part of the problem of the railroads being consolidated into a relatively few large groups. Since an

Eastern group of roads have agreed on terms of consolidation, which cannot be consummated without congressional approval, it is probable that the matter will be considered with action in view at the short session of Congress.

**A** FOURTH inquiry touching the holding company phase of the electric power situation is being made by a subcommittee of the Senate Committee on Banking, in connection with its inquiries into stock-market operations. A special investigator was looking into the matter but had made no report when this was written. The investigation is apt to be more "newsy" than constructive and to produce more of headlines than of legislation. It may be several years before Congress attains, through various investigations, a sufficient grasp of the holding company subject as to enable it to legislate comprehensively on it with reference to electric power.

**B**UT the holding company phase of the electric power question seems to have taken precedence, at least for the time being, of proposed Federal regulation of interstate transmission of current. Senator James Couzens of Michigan, chairman of the Senate Committee on Interstate Commerce, has given much attention to this phase and to that of communications. At the recent session of Congress he did not revive former proposals or put forth new ones, as to those subjects, on which there were no further hearings or investigations by his committee. It is stated that, at the short session, he may introduce bills, patterned after ones put forth by him in

Some of the Power Problems upon Which Congressional Attention May Be Directed:

1. *Federal taxation of electric current.*
2. *Holding companies.*
3. *Interstate transmission of energy.*
4. *The St. Lawrence Waterways project.*
5. *Administration of water power under Federal jurisdiction.*
6. *Muscle Shoals.*
7. *Interstate and international transmission of communications by electrical methods.*
8. *Construction projects.*



the Seventy-first Congress, providing for regulation of interstate business in electric power and of interstate and international transmissions of communications. But unless unanticipatable developments bring about action thereon, it is not probable that this Congress will find time to take important action on either phase of public utilities operations. It is not improbable that action as to interstate transmission of energy will await formulation of a comprehensive national policy regarding all phases of utilities regulation. At their recent national conventions, both of the big political parties made platform declarations in favor of Federal regulation of interstate transmission of electric current.

**I**NVOLVED in all the problems of potential expansion of utilities regulation is the question which constitutes the obstructive kernel in the deadlock over Muscle Shoals.

The question is as to how far the Federal government should or should not participate, or keep in position to

participate, in the operating of electric power enterprises. The contention of the school of thought spoken for in Congress most effectively by Senator Norris of Nebraska is that there should be enough of government ownership, together with reserved rights to engage in operations, to provide yardsticks for measuring equations of regulation and, as at least a last resort, for presenting "key" competition with private operations.

The question will cut a big figure in the handling of the many-angled St. Lawrence Waterways project, now concretely before the Senate in the form of a treaty agreed on by the diplomatic branches of the governments of the United States and Canada. The question arises in connection even with an engineering equation of the power phase of the immense project. It is the contention of those who hold to the yard-stick school that a one-dam, or one-stage, development, being less costly, would put New York state (which will control the American part of the power installation) in position to best handle

## PUBLIC UTILITIES FORTNIGHTLY

for the consuming public's interest its end of the enterprise. The treaty, as it stands, calls for two-dam, two-stage construction, this being in line with what the Canadians favor. This may be the point on which opposing schools of thought as to governmental relationships to electric power exploitation in this country will clash principally when the question of ratifying the treaty comes before the United States Senate at the coming session of Congress.

While power and other equations may lead to changes being made in the treaty before it becomes effective, it is unlikely that the project as a whole will be either adopted or rejected on questions having to do with the power phase alone. For it involves other questions of still greater complexity, if not importance. The foremost of these is the one bearing on transportation, for the development probably would affect transportation, and thus economic currents, in this country even more than the Panama Canal has affected them. Disputes over the power equation may contribute to delaying final determinations as to the question of whether the project shall be adopted and, if adopted, as to many questions regarding the program of pursuit. It is a reasonable forecast that, at best, actual work on the project will not begin in less than five or six years and that no power wheel will turn, as a result of the project's pursuit, in less than ten to twelve years.

Meantime, there will be a multiplicity of investigations, the first of which is now being made by a subcommittee of the Senate Committee on Foreign

Relations, and veritably endless debates.

**M**EANTIME, Congress probably will find some way of keeping time from dragging heavily in the precincts of the reconstituted Federal Power Commission.

Since the commission became one of full-time membership, congressional discussions of it have related mostly to its personnel. Since the Supreme Court has denied the Senate the right of canceling its confirmations of some of the President's appointments to membership on the commission, there will not be much leeway now for debates as to the make-up of the body. It is stated that Marcel Garsaud of New Orleans, an appointee upon whom the Senate did not pass at the long session, will withdraw from the situation and thus break what seemed to be a deadlock between the President and the Senate. Elaboration of power wielded by the commission probably will wait on final settlement of underlying issues of Federal regulation of public utilities.

Nothing of importance with reference to the power commission is likely to be done at the coming short session of Congress. Nor is anything of importance likely to be done as to construction projects—with the possible exception of ratification of the St. Lawrence Waterways treaty—calling for Federal government initiative or participation in the sphere of electric power. The most imminent unadopted project of that kind is that which is involved with the proposed big irrigation and reclamation development in the Columbia river basin. Congress has had the proposal under

## PUBLIC UTILITIES FORTNIGHTLY

consideration many years, but is not likely to take steps soon towards going through with it.

So the national legislative situation as to public utilities remains as it was during the recent session of Congress—that is, it is one of much discussion, of heated argumentation, considerable research, and little positive action. The situation may be changed somewhat by the results of the national election in November.

It is the general opinion that a result of the election will be a more than usual number of new faces in the next Congress. Many of them will be of persons who are stressing the so-called power issue in their campaigning. But new members *per se* do not count for a great deal in Congress, as places of leadership always go to old members. New members may have something to do with the distributing of power among the lead-

ers. The party complexion of Congress will have some bearing in the premises and a change of administration, should it occur, may have considerable. However, there is not much difference between expressions in the Democratic and Republican platforms on questions relating to the utilities. Adherents of various schools of thought thereon are distributed politically in more or less disregard of party alignments. But there is probably a good deal of difference, underlyingly, between the standpoints from which the power question is viewed by the respective candidates for President of the big parties.

So far as Congress alone is concerned there is only one certain prospect regarding the handling of utilities questions. It is of continued investigating and debating and a feeling out for formulas of action.

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### Believe It or Not, But—

NORFOLK, Virginia, was the first city in the Bell System to have dial-operated telephone service.

\* \*  
CINCINNATI is the only city in the country to own a railroad line—the Cincinnati & Southern, running to Chattanooga and leased to and operated by the Southern Railway.

\* \*  
FIFTEEN thousand factory workers in North Carolina manufacturing centers were put out of employment when a band of strikers toured about and cut off electric power.

\* \*  
AN entire municipally owned telephone system, comprising more than forty-five miles of wire and poles, was recently bought in San Diego by the Southern California Telephone Company for one dollar.

\* \*  
A POLICE dog near Waukegan, Illinois, which had not been released at the usual hour from the office of a poultry farm where he was confined, knocked the telephone receiver off the hook and by his barking summoned help.

\* \*  
THE plea of Noah W. Cooper of Memphis, Tennessee, to compel the Pennsylvania Railroad to discontinue all Sunday trains on the ground that they violate the Sabbath and have thereby brought about the current depression as a visitation of God's wrath, has been denied by the Interstate Commerce Commission.

# A Code of Ethics

*Drawn up by the Illinois Commerce Commission as a guide for the conduct of practitioners who appear before that body, and adopted April 6, 1932.*

## I

THESE canons are in furtherance of the purpose of the commission's Rules of Practice which enjoin upon all persons appearing in proceedings before it, to conform as nearly as may be, to the standards of ethical conduct required of practitioners before the Courts of Record of Illinois, and such standards are taken as a basis for these specifications, modified in so far as the nature of the practice before the commission requires.

## II

IT is the duty of the practitioner to maintain toward the commission a respectful attitude, not for the sake of the incumbent of the office, but for the maintenance of the importance of the functions he administers. In that respect, the practitioner, as well as his clients, should refrain from indulging in loud or boisterous language, and from smoking while the commission, its examiners or assistants, are conducting hearings, or transacting official business.

## III

PRACTITIONERS shall be punctual in attendance, and concise and direct in the trial and disposition of the causes.

## IV

ALL attorneys and persons appearing in proceedings before the commission must conform to the standards of ethical conduct generally required of attorneys and practitioners in Courts of Record of the state of Illinois. Failure to conform to such standards of ethical conduct will be ground for declining to permit practice before, or appearance as, attorney or practitioner, in any proceeding, before the commission.

## V

NO attorney or other person, representing any persons or interest in any matter that may come before, or is pending before, the commission, shall represent that he has, or is able to exert, political or other influence, upon the decision of the commission, its members or other officers, and any person so found guilty of this offense shall be subject to disbarment from practice before this commission.

## VI

IT is unethical for a practitioner to attempt to sway the judgment of the commission by propaganda, or by enlisting the influence or intercession of members of the state legislature or other public officers, or by threats of political or personal reprisal.

## VII

IT is unethical for the practitioner to represent conflicting interests, except by express consent of all concerned, given after a full disclosure of the facts.

## VIII

A PRACTITIONER should not, in any way, communicate with a party represented by counsel, except upon express consent or agreement with such counsel.

## IX

IT shall be unethical for practitioners before the commission, to solicit business of the shippers or users of public utility services. The commission looks with disfavor upon the acceptance by attorneys or practitioners of business before the commission on a contingent fee basis.

## X

NO division of fees for services is proper, except with a member of the Bar, based upon a division of service or responsibility.

## XI

A PRACTITIONER shall not undertake a case where compensation of a witness shall be contingent upon the success of the cause in which he is called.

## XII

A PRACTITIONER may not properly agree with the client that the practitioner shall pay or bear the expenses of litigation.

## XIII

A PRACTITIONER shall use his best efforts to restrain and to prevent his clients from doing those things which he himself ought

## PUBLIC UTILITIES FORTNIGHTLY

not to do, particularly with reference to their conduct towards the commission, other practitioners, witnesses, or suitors.

### XIV

**I**N no event shall the attorney or practitioner in a proceeding, testify as a witness on his own behalf, or on behalf of a client.

### XV

**O**NLY duly licensed attorneys of the state of Illinois shall be permitted to appear before the commission. Permission, however, may be granted in the discretion of the commission, to permit a person qualified by ex-

perience to appear before it. Any person may appear in his own behalf. The commission may deny any attorney, practitioner, or other person, the right to practice before the commission for failure to comply with, or for violation of any of the provisions of the code of ethics and/or the rules and regulations of this commission, or for other good and sufficient cause.

### XVI

**P**RACTITIONERS should approach the Bar of the commission as and when making any announcement or when presenting any motion, argument, or other matter before the commission.

## Remarkable Remarks

PAUL CLAPP

*Vice president, Columbia Gas and Electric Company.*

"There are a number of electric utility companies now paying in taxes as much as 25 to 30 per cent of their net income."

GEORGE L. HOXIE

*Economist.*

"Every municipal business enterprise of which the writer has knowledge, was started with money taken directly from taxpayers through the taxing power."

FLOYD W. PARSONS  
*Editor and economist.*

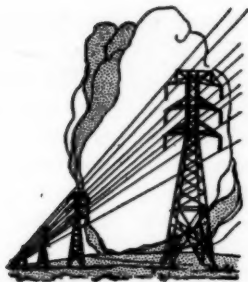
"Unregulated monopoly would be as bad, or even worse, than unrestrained individualism. But that is not what we are going to get. What we approach is a form of monopoly constructed on lines that will prevent a few from profiting extortionately at the expense of the many. We are on the road to a new system, and there can be no turning back."

NORMAN THOMAS  
*Socialist candidate for the Presidency.*

"If I were elected President, my first step would be to mobilize the country for war on unemployment along socialistic lines. The vital thing for which I would work would be to transfer the natural resources and the principal means of production from private to public hands, from management for private profit to management for public use."

HARRY G. LESLIE  
*Governor of Indiana.*

"The provision (in bill H 682, to permit municipalities to build and operate public utilities without the jurisdiction of the public service commission) for the issuance of bonds or the pledging, hypothecating, or assigning of earnings of the public utility to any person or corporation by a municipality, would open the way for the sale of an unlimited amount of utility equipment to municipalities."



## THE ECONOMIC WASTE OF Competing Utility Services

IN the preceding number of PUBLIC UTILITIES FORTNIGHTLY (September 1st) OTTO BOCK, formerly of the public service commission of Colorado, set forth his reasons for believing that competition between privately owned and publicly owned utility corporations, constituted the most effective system of regulation. The following article presents the viewpoint of those who believe that such a form of regulation is economically wasteful.

By ERNEST GREENWOOD

**W**HEN their economic, political, and social arguments fail, the advocates of municipal, regional, state, or Federal ownership and operation of electric utilities fall back on the statement that "regulation by states has broken down." They are not always convincingly specific as to how or why it has broken down; they just say it has broken down and let it go at that.

Some of these critics blame the electric light and power companies themselves for this alleged failure. It seems that the companies spend untold sums hiring high-priced lawyers and engineers to "out-smart" the commissioners. Some of them employ city slickers to sell gold bricks in the form of excessive rates to the buccolic administrators of the public utility law. They may even go so far as to see that a governor is elected

who will appoint to the public service commission men who will have their interests at heart. They stop at nothing—these electric light and power companies. That is, according to the advocates of government ownership.

Other critics are satisfied with blaming the public service commissioners. They are lazy, they are dumb, they do not have the interests of the consumers at heart, they are politicians intent on conserving their jobs, they bed down with the companies, and what not. Commissioners have even been accused of accepting bribes although I do not know, at the moment, of a single case where any such blanket accusation has been shown to have any basis of fact.

Still other critics blame both the companies and the commissioners. They are working together, hand and glove, to beat the law, keep out of

## PUBLIC UTILITIES FORTNIGHTLY

jail, and do everything possible to create more misery for the public. To paraphrase an old saw:

"Everybody is crooked but thee and me and sometimes thee's a little crooked."

**N**OW comes a new school of philosophy which undertakes to explain why state regulation has failed. Its theories are based on the premises that:

- (1) There is a "Power Trust";
- (2) This Power Trust has a monopoly of electric service in the United States and, therefore, has no competition;
- (3) Regulation is not only unsatisfactory but, alone, is not sufficient to protect the public interest.

The conclusion which the followers of this new school of thought reach is that until "restricted and limited competitive conditions" are created, state regulation will continue to fail and the public will continue to be at the mercy of the electric light and power companies. Wide open competition between electric utilities operating in the same communities will make regulation a success. The nostrums of those who advocate government ownership and operation of everything are, we are assured, cures for all our economic ailments.

**T**HAT many people in the United States are dissatisfied with electric light and power rates is apparent. That there are any considerable number of people in the United States who are dissatisfied with electric light and power service is doubtful. That there is some public dissatisfaction with the procedure of some of the state public

service commissions has been evident from time to time.

This does not mean, however, that the critics of the electric light and power industry, of its rates, or of its methods of doing business, are right. Nor does it prove that state regulation has "broken down," wholly or in part. In these days the public generally is dissatisfied with everything and not without reason. The average citizen, for example, is dissatisfied with both the Republican and Democratic parties. He is dissatisfied with his boss because his salary has been cut. He damns the banking industry because the mortgage on his house or on some friend's house has been foreclosed or because his bank will not loan him any money. He criticizes the telephone company for not reducing its rates and for charging him an additional monthly fee for a French phone. He ridicules economists when they tell him that 60 cents will buy as much food and clothing today as a dollar would in 1926; he says he hasn't got 60 cents. He assails the electrical, gas, railroad, and street railway industries for not instantly passing on to him the benefits of their wage cuts and reduced payrolls. If he is a Wet he blames economic conditions on the Drys, and if he is a Dry he blames them on the Wets. The politicians in office are a lot of crooks and morons and there isn't much use in throwing them out for they would only make way for another bunch just as crooked and just as stupid. Everything is all wrong and it is always the fault of some one else.

If state regulation of the electric light and power industry has failed to protect the public against excessive

## PUBLIC UTILITIES FORTNIGHTLY

rates or inadequate service, the failure is certainly not due to lack of competition. Nor is it due to any flaw in the scheme of state regulation—unless it be a political flaw.

**I**F it is true that state regulation has failed, even to a moderate degree, then the fault must lie with the machinery set up to enforce the public utility laws of the various states. These laws are good laws. If properly enforced they give ample protection to both the consuming public and the electric service companies. The public may have granted these companies a monopoly in so far as freedom from the competition of like services of like kind are concerned, but it has surrounded that monopoly with all sorts of commands and prohibitions.

This does not imply that the members of the various public service commissions are dishonest and playing into the hands of the companies. Nor does it suggest that they are inefficient or negligent in their duties to the public. It does suggest, however, that possibly there may be something wrong with the procedure which keeps the public mind in a continual ferment of dissatisfaction.

Any one who says that the electric light and power company has no competition for the consumer's dollar is unfamiliar with the business. It must

compete with the gas company for mechanical refrigeration, cooking, and the heating of water. It competes with the private generating plant for manufacturing establishments, hotels, hospitals, educational institutions, department stores, theatres, and office buildings for industrial and commercial electric power and lighting. In these days of cheap fuel oil and long-distance pipe line transportation of natural gas this competition is a serious matter. It is, in fact, surrounded with all sorts of "competitive conditions" which are neither "limited" nor "restricted."

**I**F I understand the idea of this new school of political economy correctly, it calls for two or more electric light and power companies competing for business in every community.

Just how this can be accomplished and at the same time avoid criminal waste is not clear. Does it mean that one company would work one side of the street and another company work the other side? This would necessitate, of course, two generating plants and two complete distributing systems.

Or would every other block be assigned to one company and the balance of the territory to the other? This involves the same duplication of capital investment. Perhaps every other street could be assigned to each com-



**Q** "ANY ONE who says that the electric light and power company has no competition for the consumer's dollar is unfamiliar with the business. It must compete with the gas company. . . . It competes with the private generating plant."

## PUBLIC UTILITIES FORTNIGHTLY

pany involving duplication of generating plant and equipment only.

What is probably meant is wide open competition with two or more companies struggling for the business of every consumer in the community. This involves complete duplication of generating equipment, distributing systems, salaries, wages, bookkeeping, engineering, and almost everything else which goes into the rendering of electric service. The capital charges, overhead and operating expense of each company would be almost as much as in the case of a single company doing all the business with each company having only half the business and receiving only half the gross income. Even the cost of meter reading and bill collecting would be doubled for the meter readers and bill collectors of each company would have to cover the same amount of territory as in the case of a single company. There might be a little saving in postage and stationery.

This enormous waste is waved aside with an airy gesture that is almost contemptuous. "If a limited amount of waste in duplication of service is necessary so that the public may obtain service and reasonable rates," it is said "then such waste in duplication is justifiable."

The answer is: The waste would be almost unlimited; the public is not only obtaining service but is getting the best electric service in the world, and rates are reasonable in a majority of the communities of the United States. The citizens of many cities still remember the agonies of two competing telephone systems. Market street, San Francisco, is an existing example of the miseries of two com-

peting street car lines. The interpretation of a Federal Trade Commission investigator of the Cleveland situation, means nothing.

**I**T is claimed that it is within the power of the electrical industry to permit or not to permit a "competitive relationship" whatever that is. This is a rather sly insinuation that there is an honest to goodness "Power Trust" without coming right out and saying so. There is much talk about holding and investment companies, inter-relations, and the much martyred National Electric Light Association to substantiate these inferences.

I hate to say it—but I must; this is pure, unadulterated bunk. There is no such thing as a "Power Trust." I am not affiliated or connected with any electric light and power company, holding company, organization, or trade association. I don't own a dollar's worth of any public utility bonds, stocks, warrants, or other forms of securities. I am not making a dollar out of the industry and there is little prospect of my doing so in the near future. There are some units in the utility industry which are given to business practices which I whole-heartedly condemn. But I know whereof I speak; there is no such thing as a "Power Trust" and in the very nature of the business there cannot be.

**I**N those communities or areas where rates are excessive and produce more than a reasonable return on the value of the property in use or usable in the public service the solution does not lie in the creation of "a competitive condition." This condition al-

## When Two Public Service Corporations Compete in the Same Community

**"T**HIS involves complete duplication of generating equipment, distributing systems, salaries, wages, bookkeeping, engineering, and almost everything else which goes into the rendering of electric service. The capital charges, overhead and operating expense of each company would be almost as much as in the case of a single company."



ready exists. It lies in repairs and replacements of the machinery of regulation. A little more attention to lubrication would be helpful. If you attempt to run an automobile without lubricating oil you immediately burn out the bearings and raise hob generally with the engine. If you attempt to run a public service commission without ample funds to do the work it is supposed to do you simply have another government establishment wasting what money the taxpayers, through their legislatures, have given it.

The great problem is public opinion. There is an atmosphere of mystery around the operations of a public service commission. To the average citizen, knowing nothing about the difficulties of administering a public utility law, they seem to be constantly hedging. They have innumerable conferences with company officials. They conduct endless negotiations and arrive at new rate schedules by compromise, weeping over their inability to fix values. The man on the street calls it "shaking dice for the decision." City officials, with an eye on the next election day, tell the voters

how helpless they are in dealing with the folks in the state capitol. Company lawyers and engineers "out-smart" the commissioners who have not been given sufficient appropriations to hire equally competent lawyers and engineers. The public does not know what it is all about so concludes that the rates are too high no matter what they are.

This problem of handling public opinion can be solved by injecting a new element into the machinery of rate fixing. I have made the suggestion before and will continue to make it whenever I get the opportunity. This is the element of arbitration.

**A**T the present time communities feel they have little or nothing to say about the rates which their citizens shall be charged for electric light and power. Citizens' committees march on the state capital; make speeches to the public service commission which, boiled down, contain nothing but statements that rates are too high and that they are not getting a square deal; listen to numberless company witnesses giving testimony filled with technical terms which they do not

## PUBLIC UTILITIES FORTNIGHTLY

understand; and march away again.

If the citizens of any local community want to feel that they have something to say about the rates charged in their home town, why not set up a local arbitration board which will make recommendations to the public service commission? This board could consist of men so outstanding in the business and social life of the community that the integrity of their findings could not be attacked. Both the company and the city government could be represented with the balance of power held by a third and independent group picked by these representatives.

The members of such a board, assisted by a small group of picked engineers and other experts, could sit around a table, day after day, attempting to arrive at some agreement for a scientifically constructed rate structure which would meet any merit-

ed complaint on the part of the public. It would not disturb the present system of regulation by state laws administered by public service commissions in the slightest degree. The final opinion or agreement reached by the arbitration board could be handed to the public service commission as its best judgment as to proper rates for the various classes of service for authoritative approval and promulgation. The city government and the company would be satisfied and the public would have a sense of security.

Arbitration, as a method of settling disputes, is almost as old as the law itself. It has been used over and over again since the days of the early Greeks and Romans as a means of escape from the delays and expenses of ordinary legal processes. There is no reason why it should not be applied to rate fixing.

At least, it is worth a trial.



### Odd Items about the Utilities Abroad

It is illegal to tip Pullman porters in Austria.

\* \* \*  
SWEDEN'S oldest telephone "girl" recently celebrated her eightieth birthday, and is still on duty fourteen hours a day.

\* \* \*  
GEORGE BENNIE of Scotland has driven a passenger car suspended from a track, and equipped with air propellers, at a speed of 150 miles an hour.

\* \* \*  
HONEYMOON couples in Italy have just been granted an 80 per cent reduction in round-trip railroad fares in third-class compartments on trains leaving Rome.

\* \* \*  
AN Austrian engineer has designed a "poor man's telephone," enclosed in a box and installed in the hallway of an apartment building. Only occupants have keys, and each receives incoming calls by a code telephone ring to his apartment.

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# What Others Think

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## Regulation by Negotiation Develops into a "Real Movement"

NEXT to the client who attempts to draw his own will, nothing brings more joy to the heart (and money to the pockets) of the hard-working lawyers during these depressing times than the "scrappy" client—the cantankerous citizen with a perpetual chip on his shoulder who is willing to "go to law" at the drop of the hat.

Smart business men have realized for some time that it does not always pay to go to law no matter how "right" one might be. The principles of law are fairly well established for practically all routine situations, and so the smart business men have adopted the practice of trying their own cases in their own courts, seated around their own tables. They send their lawyers out to "look up the law" and write a memorandum as to what probably would happen to the case in court if the matter went to trial. The lawyers are directed to give honest and judicial opinions instead of arguments to the jury. When the opposing briefs are compared, the modern executive can figure out fairly well just about what would happen at the hands of a jury; and so they agree among themselves. No trial; no expense; no delays, and—most important of all—no bitterness. It is safe to say that at least nine out of ten commercial controversies are settled in this way in private offices every day. The commercial court action is only the occasional unit that raises its head for legal inspection out of the ceaseless stream of routine controversies.

But notwithstanding this development of arbitration, the scrappy client, like the poor in the gospel, seems to be always with us. Nowhere is he more

ubiquitous and more insistent on "legal rights" than in the field of regulatory litigation. He takes the form of a smart young lawyer crying for a pound of flesh by way of performance of franchise obligations by a street railway company already, as H. L. Menkin has described it, "reduced to the estate and dignity of a bonus marcher." He takes the form of a newspaper editor soundly denouncing the state commission for not beating its head open against the stone wall of Federal decisions requiring certain standards for rate valuations. Sometimes he takes the form of a municipal official promising to "appeal to the highest court in the land if necessary" (at the taxpayers' expense, of course), from an adverse decision in a rate controversy so trifling that it would not in one year involve an amount equal to the cost of the first appeal, and so obvious that nineteen out of twenty judges would affirm it without even writing an opinion.

It would be a public service if it were possible for someone to collect the figures representing the total cost of certain famous drawn-out appeals and comparing them with the result accomplished. Who profits by these 9-year-old rate fights? Results would probably show that neither the ratepayers nor the utilities, on a general average, gain as much as the lawyers. It is like the old story of two men who found an oyster on the beach and asked the lawyer to settle the dispute as to its ownership "equitably." The lawyer opened the oyster, ate it, and handed each a half shell.

Equity only too frequently costs as much.

## PUBLIC UTILITIES FORTNIGHTLY

THE commissions are beginning to show that they realize the waste caused by insistence for the uttermost farthing's worth of legal rights. Many of the utilities also (notably those in Massachusetts and California) have found that a give-and-take attitude pays more real dividends, not to mention the gain of good public relations, than the attitude of being ready, willing, and able at all times to plague the courts with their troubles. It is probably safe to say that if a utility were rich enough and foolish enough to avail itself of every possible legal point all along the route of an important rate case, some rate cases could be continued as long as twenty years.

But there are some who fail to see why every rate case should not be fought to the bitter end, and that goes not only for the utilities, but for their critics. The New York commission was recently severely criticized in some quarters for accepting a voluntary offer by the electric companies operating around New York city to reduce rates instead of entering upon a costly valuation proceeding (against which the utilities would probably fight every inch of the way, in self-defense or otherwise) merely on a chance of squeezing out a greater reduction.

THE state commissions of West Virginia, North Carolina, and more recently Wisconsin have shown some indications of joining this "round-table" school of regulators. In a statement made to the public June 18, 1932, the West Virginia commission pointed out that early this year, when it became apparent that there was to be no immediate relief of the economic conditions which had grown steadily worse since 1930, it had called on every utility under its jurisdiction for a special report of its fixed capital investment, operating revenues and expenses, depreciation charges, as well as a statement of any change in size of wages or in the number of persons employed. The commission's experts were put to work to analyze these special reports in connec-

tion with the regular analyses of reports which are automatically granted each year. The result of this investigation disclosed that larger public utilities doing business in West Virginia were earning from 3 to 5 per cent on their capital investment as shown by their books, while reports of a few of the smaller utility companies showed greater profits than appeared to be justified under the existing conditions, owing to curtailment in operating expenses, changed price levels, and other causes. In the latter case the commission made arrangements in every instance for conferences between the utility officials and its own staff. At these conferences a full and frank discussion of the problems have been made possible. A number of these investigations are now pending. The commission's statement concluded:

"This procedure, and the policy of across-the-table discussion, saves the great expense and loss of time incident to formal rate investigations, and usually results in adjustment of rates satisfactory to the legal and equitable requirement that charges against the public for monopolistic public utility service must be reasonable and just. The policy is not new, although the work has been speeded up since the first of the year because of rapidly changing and most unusual conditions. It has been in effective use for several years, and has resulted in material reductions in general residential rates for electricity, the elimination of numerous discriminatory charges for various other public utility services, and a marked improvement in the form and substance of many rate schedules.

"For obvious reasons, these investigations which necessarily involve negotiations by conferences are not made public while they are pending. Such a course would destroy the usefulness of the procedure which depends for its success upon free and candid discussion; it would at once put the utility in the position of cautious resistance to any rate reduction in many instances and would throw the whole question into a long and expensive investigation involving due process and formal hearing. Of necessity, the public is apprised of these proceedings through the commission's orders, and the reduction of its monthly bill for utility service. The orders are a part of the public records and are printed in the annual report required by law to be made to the governor. These printed reports are available to any citizen on request."

## PUBLIC UTILITIES FORTNIGHTLY

IN North Carolina the commission ordered public utilities to appear on dates yet to be fixed "for the purpose of conferring with a view to effecting such immediate reductions in rates as may be legitimately possible under present conditions." The commission announced that it had completed a survey of utilities, made in response to a demand for readjustment of rates, and was determined that the lowest possible rate which would yield a fair return should be promptly put into effect. Commenting on these negotiations the weekly magazine *Telephony* editorially stated that the protection of a "fair return" is all that public service companies are asking for, and that such a program promises a square deal for both sides. The editorial continues:

"Furthermore, in inviting the telephone, gas, and electric companies to meet the commission and discuss the rate situation, the regulatory authorities are showing a more open-minded disposition, a greater desire to reach an amicable understanding, than if they had taken snap judgment and peremptorily ordered a cut in rates.

"Negotiations of this character will achieve better results and cost the state less money, as they obviate an expensive official investigation with various technical, engineering, and appraisal research and testimony on both sides."

The North Carolina commission statement was, indeed, scrupulously fair. It took pains to point out that utilities have been suffering under the depression as well as the people, since many industrial plants have closed down causing a decline in the use of power, while telephone companies have lost thousands of subscribers. The commission also observed that utilities were not permitted to take part in the high profits during the "boom" times before the depression. The commission statement continued:

"The public should remember that when individuals and corporations were making fabulous profits during the period of the war and as late as 1929, the public utilities were limited to their same fair return on the invested capital; we were not permitted by law to give them rates that would produce any more.

"The growth in public utility revenue in this state after the World War resulted from growth in business by expansion into new territory and building by industry, and not from increase in rates.

"Public utilities, under the law, are entitled to charge just and reasonable rates for service which they render to the public. Under our regulatory law and rules made thereunder, the method by which these just and reasonable rates shall be ascertained is prescribed."

ALTHOUGH certain other orders of the Wisconsin commission threaten to be entertained in the courts for some time to come, in reducing the rates of the Madison Gas & Electric Company by an annual total of \$200,000 as a result of informal negotiations, the Wisconsin commission revealed its willingness to settle rate cases by this method of arbitration if possible.

Commissioner David E. Lilienthal during the course of the negotiations, which resulted in reductions of approximately nine per cent on the bills of the gas and electric consumers in the Madison area, stated:

"This negotiation has been marked by wide differences of opinion between the parties, but it has succeeded because both the company's executives and the commission conferees were honestly endeavoring to reach a settlement.

"The policy and practice of the company in dealing fairly and frankly with us throughout this protracted and trying negotiation seems to us not only commendable and public-spirited but in the long run shows good business judgment.

"The almost overwhelming volume of work which faces the public service commission at this time, and the limitations under which we must work makes successful negotiation especially important at this juncture. Negotiations, while involving technical assistance and infinite patience, do not place such a load upon the commission and its staff as formal proceedings, which are inevitably slow and expensive."

The success of this negotiation made it possible for the commission to secure for the consumers of Madison the benefits of lower rates without the delay of waiting for the completion of a rate proceeding, and yet without in any way compromising or affecting the outcome of the formal proceeding in which all

## PUBLIC UTILITIES FORTNIGHTLY

the facts would be available for a formal determination.

OF course, we cannot expect to have negotiations succeed formal regulation, not, at least, before the millennium arrives. Arbitration in civil litigation is not a complete substitute for court action, but rather the result of jammed dockets and legal delay. This is proven by the fact that the addition of judges rarely results in clearing court dockets, but merely increases the number of those who are not forced by docket delay to settle matters between themselves.

A similar situation will probably prevail in the field of utility regulation. Regulation by negotiation has developed

because of the delays of formal appellate procedure, but it probably will never entirely supersede it, since many of the state commissions are now negotiating simply because they have so much else to do that it is an easy way of clearing up the case. If our commissions were not kept so busy these days, it is a pretty fair gamble that they might not be so willing to negotiate.

—F. X. W.

"FOR THE INFORMATION OF THE PUBLIC."  
Pamphlet issued by the West Virginia Commission. Charleston, West Virginia. June 18, 1932.

EDITORIAL. *Telephony*. August 6, 1932.

"CUT IN POWER RATES MADE IN WISCONSIN."  
*United States Daily*. August 11, 1932.

## How Governor Roosevelt Stands on the "Utility Issue"

ALL who are interested in regulation are waiting anxiously to hear what the respective candidates of the two political parties will have to say, if anything, on the power issue or on utility regulation generally during the current campaign. There is a feeling in some quarters that Governor Roosevelt may decide to do a great deal of talking upon the subject and that President Hoover may be placed in a position which will require him to reply in detail.

So far, however, there is no evidence that the utility issue will get much of the campaign spotlight. An editorial in *Electrical World* sizes up the situation as follows:

"Party platforms and acceptance speeches of the presidential candidates have been completed and the political campaign is under way. Both parties urge Federal regulation of interstate electric power, both parties advocate private ownership and operation under regulation, both parties minimize the importance of the power issue and stress prohibition, unemployment, and measures for economic recovery. President Hoover advocates the St. Lawrence project as an aid to commerce and navigation, but

Governor Roosevelt goes further and advocates state-owned developments, such as the St. Lawrence, in order to introduce a threat of state ownership of all utilities and to secure a contractual control of rates established by purchasers of power from the state-owned plants. His advisers are chiefly either ardent advocates of state ownership and operation of utilities or others well known for their extreme attitude toward the utilities.

"On the whole, however, the official platforms and the statement of the candidates of both parties offer no threats to the power industry. They admit, by inference at least, that power is not a political issue of even minor importance. Thus the election of either candidate should and will depend upon his respective policies with regard to social and economic problems that hang over the country and handicap the return of normal conditions. Utility executives can continue industry expansion and investors in industry securities can retain their holdings with full assurance that the political horizon is clear."

A NEWS item in the *New York Sun* gives a summary of the views of Governor Roosevelt upon utilities, and they cannot be said to be either particularly disturbing or radical. The "6-point" program of the governor is as follows:

## PUBLIC UTILITIES FORTNIGHTLY

"1. The governor condemns as indefensible the financing methods employed by some large utility holding corporations which are now in financial difficulty, but he draws a sharp distinction between those companies which are, as he feels, soundly financed and those which create top-heavy capitalization.

"2. The governor holds as a primary principle the belief that all utility companies whose securities are publicly owned must be compelled to make public detailed statements as to their earnings, their capitalizations, and the inter-relationship of the holding companies with the operating companies. He contends that this general rule should be made to apply to all corporations which list their securities on public markets. Full publicity, he insists, should be furnished in important transactions of barter or trade which have a vital public interest. Horse trading, in his opinion, might be exempted, because it is so firmly rooted in American tradition, from this general rule.

"3. Governor Roosevelt insists upon the right of government to own power sites and to produce electric power, but does not envisage public ownership of all utilities. He explains that such a thought, which has been reported fairly widespread in Wall Street circles, is a misapprehension. The governor's position on a national basis was described as unchanged from his stand in New York state government—namely, that the mere power of the state to produce electricity and to regulate the profits which privately owned companies might derive from the sale of this power at retail would serve to forestall the temptation of raising rates unduly high.

"4. He regards as a step in the right direction the recently announced policy of the National Electric Light Association to

confine its activities solely to the field of statistics and to remove itself from lobbying or propaganda. The utility companies, in the governor's opinion, would do well to keep religiously clear of politics.

"5. While the governor is committed to a policy of stricter regulation of the utility industry, he feels that his party's campaign will not impose hardships on the soundly directed companies, although it may direct considerable fire upon those companies which, because of financial transactions or allegations of excessive rates, have aroused protests from consumers or investors.

"6. A return of 7 to 8 per cent on its investment is held by the governor to be a reasonable expectation by any power company. Consequently, he holds to the view that his program of closer regulation, by keeping this principle uppermost, will do nothing to disturb the present high investment rating of the higher grade public utility securities which in recent years have replaced railroad liens as an investment favorite."

While strongly attacking what he held is the abuse of power in the case of some utility companies, the news story states that Governor Roosevelt considers the holding company sound in principle although sometimes unsound in operation and that he contemplates no attack upon the principle of holding company organization.

—W. R. N.

"GOVERNOR ROOSEVELT'S VIEWS ON UTILITIES."  
New York Sun. August 4, 1932.

EDITORIAL. *Electrical World*. August 20, 1932.

## Was the Wisconsin Rate Order a Gesture or an Omen?

THE contents and significance of the recent interlocutory order of the Wisconsin commission cutting telephone rates in that state by 12½ per cent have been discussed in detail in previous issues of PUBLIC UTILITIES FORTNIGHTLY and elsewhere. But interesting side lights and collateral developments continue to pop up. The main fight, of course, continues unabated. At this writing enforcement of the order has been restrained temporarily by a Federal district judge until a statutory 3-judge court can be assembled and pass

upon an application for an interlocutory injunction.

The opinion of those legal men who are willing to guess at the outcome of these proceedings (and not many of them are) seem to incline towards the belief that the order will be restrained, although there is considerable sentiment to the contrary and, as the sports writers would say, "very little money is being offered."

But aside from attempts to prejudice the outcome, there is considerable speculation as to the real purpose of the

## PUBLIC UTILITIES FORTNIGHTLY

Wisconsin commission's move. What is behind it? Was it a futile gesture inspired by political exigencies? Or has the Wisconsin commission really found a way to break through the armor-plate protection which the Federal courts have so far furnished for utilities against any rate orders not based on "present fair value" of properties involved?

One group believes that the Wisconsin commission has actually found or stumbled upon an old weapon, to wit: the "value of service" limitation on rates which has been hiding in the old Federal law decisions since 1898 and which most regulatory authorities have regarded as practically embalmed. This group believes apparently that with this weapon the Wisconsin commission will be able to run the gauntlet of the Federal court proceedings and emerge with an enforceable rate reduction order which will serve as a shining precedent for a nation-wide movement along similar lines.

**T**HERE is no doubt but that by coincidence or otherwise, the Wisconsin rate order was a forerunner of an epidemic of rate reduction orders spreading from New England to the West coast.

The liberal weekly, *The New Republic*, which belongs to this first group, contained the following editorial statement to the effect that the Wisconsin commission order will prove to be the pioneer in a lasting movement toward lower utility rates, although it admits that there is serious constitutional question as to the action of the commission in forbidding the payment of dividends on common stock:

"The hour of reckoning for the private utilities which have pursued anti-social policies seems to be at hand. Last week we commented on the reduction of telephone rates ordered by the Wisconsin commission. In no less than fourteen other states action has been begun to reduce rates on electricity, gas, water, or telephone service. It will be difficult, at a time like this, for utilities to resist pressure for reduction, and it is likely to spread and intensify. Of course, no probable cut in rates will threaten the

solvency of any operating company; the coming wave will doubtless leave them all in a better position in respect to earnings than most concerns in other industries. Nevertheless, it will spoil, for a time at least, the holding-company game. As has many times been explained, the pyramiding of securities in holding companies means that a trifling difference in the earnings of operating subsidiaries makes a tremendous difference in the earnings of the companies at the top of the pyramid. It was this fact which made the holding companies so immensely profitable while the operating companies were earning only what was, in the judgment of commissions and courts, supposed to be a 'fair return' on their 'value.' As operating returns are reduced, holding-company profits will melt like snow under a tropical sun."

"A subsequent action of the Wisconsin commission in regard to other utilities than the telephone company has brought an enraged howl from the magnates of this industry, but ought to be appreciated more highly by common, garden investors. As a precautionary measure, the commission has forbidden a number of companies to pay any more dividends on common stock until it has ascertained whether they are in a position to go on paying interest on their bonds and other obligations supposed to be prior to the shares in question. Since the stock is owned principally by the holding companies, which use it to gather in their profits, after having derived a major part of the money needed to build and equip the plants from the public investors in bonds, this measure would seem to be one of eminent justice. Also, the commission has asked embarrassing questions about the salaries paid to high officials. It may be, as the utility powers contend, that this sort of thing is unconstitutional, but if capitalistic morality is to preserve any vestige of decency, there can hardly be an equitable objection to preventing the insiders from robbing the outsiders in a clear case of this kind."

**T**HE other group apparently sees in the Wisconsin rate order an empty political gesture. They contend that the commission's order is so obviously reversible in the Federal courts that even the commission itself must have had no illusions about the final outcome. Federal courts, however, move very slowly whereas election is only four months away. The weekly magazine, *Telephony*, an able spokesman for the telephone industry seems to incline towards this position. In a recent editorial it stated:

## PUBLIC UTILITIES FORTNIGHTLY

"Telephone rate litigation provides plenty of grist for the grinding of the Federal courts. After nine long years of court proceedings, hearings in the Chicago telephone case have been suspended with instructions to the lawyers to file briefs next fall. Oral arguments will be made in December, and then three Federal judges will take the case 'under advisement.'

"Now comes another big telephone battle in Wisconsin, where the state commission has issued a temporary order reducing the exchange rates of the Wisconsin (Bell) Telephone Company 12½ per cent, taking effect August 1st, and it is expected the company will appeal to the Federal court to prevent the execution of the order.

"That means another long fight, especially as the commission says that another year will be necessary to complete its investigation for the fixing of permanent rates for the 102 communities in the state served by the company.

"Just how long it will take the court to dispose of the appeal the mind of man cannot forecast, but it is certain that no speed records will be broken. . . . 'An arbitrary cut of 12½ per cent in exchange rates is considered severe, and it will be up to the court to which appeal is made to pass upon its fairness. In the meantime, of course, the politicians can say to the voters: 'See how we have come to your rescue!'

"And the election is less than four months away."

In a subsequent editorial *Telephony* stated that no business can sell its product below cost very long and stay in business—not even during hard times when men will make great sacrifices to keep an enterprise afloat. It added:

"Rate-making commissions that concede these facts will get somewhere in their efforts to help people with reduced incomes to meet their utility bills. Other commissions—Wisconsin, for instance—that disregard facts and take a short-cut to lower rates, may momentarily win political ap-

plause but are not likely to make much real progress."

SOME indication of how the business men regard the theories of rate making promulgated in the Wisconsin telephone order is ventured in an editorial in the August issue of *Nation's Business* which states:

"The Wisconsin Public Service Commission has told the Wisconsin Telephone Company that it must reduce by 12½ per cent the local rates for 102 exchanges. The commission holds that with decreases in family income the value of telephone rates has fallen, and says:

"While the tendency of the courts in recent years has been to give primary consideration to the cost of operation and return upon value, it must not be forgotten that it is still the law that rates, regardless of their effect upon the financial condition of the company, cannot exceed what the services are reasonably worth."

"Try this idea on your own business. You are, we will suggest, a retailer of shoes or a manufacturer of plows. To you it says: 'Rates (price of your product), regardless of the effect upon the financial condition of the company, cannot exceed what the services are reasonably worth. Shoes—my personal income being halved—for which I once paid \$8 are now worth only \$4.'

"A fine argument!"

The magazine, *Telephony*, commenting upon this editorial, suggested that the same logic might well be applied to the salaries of the Wisconsin commissioners which would be cut in half for the benefit of the taxpayers whose incomes have been reduced.

—M. M.

EDITORIAL. *The New Republic*. July 27, 1932.

EDITORIAL. *Telephony*. July 16, 1932.

EDITORIAL. *Nation's Business*. August, 1932.

## The Increasing Urge to "Boss" the State Commissions

A PUBLIC service commission is a difficult specimen to classify in the legal test tubes. In its threefold nature of *quasi* judicial, *quasi* legislative, and *quasi* administrative capacities it presents to the student of jurisprudence all

the perplexities that the mystery of the Trinity probably presented to mediæval theologians. Originally all governmental powers were, according to the state and Federal Constitutions, divided, like Cæsar's Gaul, into three parts. Yet

## PUBLIC UTILITIES FORTNIGHTLY

here is a modern creation exercising all three types of powers, but failing to fall definitely into any specific category.

It is fundamental and obvious, however, that no single branch of the government should dominate the actions of our public service commissions if their anticipated functions are to be fulfilled. They must be left free to act within their appointed spheres without any interference from any executive, judicial, or legislative arms. Thus, the courts in reviewing a rate order may not themselves fix a utility's rates. The courts, incidentally, have probably refrained from invading the province of the commissioners more carefully than the other two branches of the government.

**T**HERE is increasing evidence on the other hand that governors and legislatures are showing a tendency to "boss" the commissions. Recently the West Virginia legislature passed a resolution directing the commission of that state to make certain arbitrary reductions in utility rates. The commission's prompt reply was not only courageous, but very much to the point. It stated in part:

"We do not understand that the House intended by this resolution to direct the commission to order a wholesale reduction in public utility rates, arbitrarily, without regard to actual operating costs of each company whose rates are to be affected and without according such companies the right to be heard.

"Such action is beyond the delegated powers conferred upon the commission by the legislature and beyond the powers that can lawfully be delegated to it."

The statement pointed to numerous decisions of the Supreme Court of the United States that operating charges, fair return, and other matters must be taken into consideration in fixing rates. The commission also pointed to a number of individual rate reductions which had been secured by the commission's action and aggregating \$2,000,000. The statement concluded:

"Whatever the notion of uninformed persons to the contrary, the fact remains that reductions aggregating more than \$2,000,000

a year and affecting about 177,000 persons have been brought about in the last four years in proceedings initiated by the commission, without complaint from any rate-payer, and prosecuted by conference and negotiation in which the commission was full-handed with facts ascertained by its staff of experts."

**A**NOTHER possible example of interference (this time from the executive branch of a state government) flared up in Ohio where Commissioner John W. Bricker's resignation was rejected by the governor on grounds that the commissioner should complete certain rate matters now pending before the resignation could be accepted. In his reply to Governor White, Commissioner Bricker stated in part:

"You have not conferred with me about matters before this commission, but have called to your office your representatives hereon, the chairman of the commission, and certain employees of this commission to confer with them. I concluded that you wished to assume responsibility for the conduct of this commission and if mistaken in that I only ask your cooperation that there may be a prompt determination of this cause.

"I interpret your letter, therefore, of August 11th and the recent action of your chairman in assigning this cause for immediate consideration by the commission as an assurance of that cooperation and hope as a result thereof this case may be promptly decided without the intervention of the commissions' engineers or any independent investigation outside of the record.

"This is the only course that can be pursued and if this commission should err in its decision the record is complete so that both the company and the city may try every debatable question in the proper court."

**I**N Pennsylvania Governor Pinchot has succeeded in obtaining the removal of three fifths of the public service commission as constituted at the time when he took office at Harrisburg. Governor Pinchot has frequently announced his own ideas as to how the public service commission should be run, and his appointees to that board will presumably carry out these principles. This action of the governor resulted in a recent editorial criticism by

## PUBLIC UTILITIES FORTNIGHTLY

the *Evening Public Ledger* (Republican) of Philadelphia, which observed editorially:

"Governor Pinchot, during his first term, acted as though he believed that the public service commission was an arm of the executive branch of the government. He tried to remove two members of the commission whose conduct did not please him. He is now credited with a desire to remake the commission to suit himself.

"When the supreme court checked his attempt to remove the commissioners, it corrected the governor's misapprehension. It said that the commission is an arm of the legislature created to perform legislative functions in connection with rate making which could not conveniently be performed by the legislature itself. . . .

"To make the commission an arm of the executive by ignoring the rights of the senate cannot be justified. It is contrary to the whole purpose of the law and would be an attempt to nullify the ruling of the supreme court, which interpreted that law during the governor's previous term."

IN New York, Governor Roosevelt started his term in a manner which appeared to many as if he were trying to "make over" the New York commission to suit himself. He stopped short of naming a majority, however, and the newly organized commission appears to be working quite harmoniously, and it is notable that the recent opinions of the New York commission, particularly when written by his own appointees, show no indication of domination by the governor.

—M. M.

STATEMENT by the West Virginia Public Service Commission to the House of Delegates. August 5, 1930.

STATEMENT of Commissioner John W. Brickner to Governor White of Ohio. *United States Daily*. August 18, 1932.

EDITORIAL. *Evening Public Ledger*. Philadelphia, Pa. August 3, 1932.

## Other Articles Worth Reading

ARE THE RAILROADS CONSUMER CONSCIOUS? No. By Earnest Elmo Calkins. *The Rotarian*. July, 1932.

COMMISSION REGULATION OF PUBLIC UTILITY SERVICE IN CONNECTICUT. By Clyde Olin Fisher. *The Journal of Land & Public Utility Economics*. August, 1932.

DIFFERENTIAL TELEPHONE RATES. By James K. Hall. *The Journal of Land & Public Utility Economics*. August, 1932.

ELECTRIC RATES AND COST OF LIVING. By Luther R. Nash. *Stone & Webster Journal*. June, 1932.

THE FUTURE OF THE RAILROADS. By Winthrop M. Daniels. *The Nation*. June 22, 1932.

THE OPPOSITION TO PUBLIC UTILITY APPLIANCE MERCHANDISING. By Richard A. Harvill. *The Journal of Land & Public Utility Economics*. August, 1932.

## Publications Received

ANALYZING OUR INDUSTRIES. By Cecil Eaton Fraser and Georges F. Doriot. New York: McGraw-Hill Book Co. 1932. 458 pages. \$5.

A PLANNED SOCIETY. By George Soule. New York: The Macmillan Company. 1932. 295 pages. Price \$2.50.

GENERAL SALES TAXATION: Its History and Development. By Alfred D. Buehler. New York. The Business Bourse. 378 pages. Price \$5.00.

GOVERNMENT—NOT POLITICS. By Franklin D. Roosevelt. New York: Covici-Friede. 1932. 107 pages. Price \$1.

OUR WONDERLAND OF BUREAUCRACY. By James M. Beck. New York: The Macmillan Company. 1932. 272 pages. Price \$3.

OWEN D. YOUNG. By Ida M. Tarbell. New York: The Macmillan Company. 1932. 354 pages. Price \$3.00.

THE ECONOMICS OF PUBLIC UTILITIES. By L. R. Nash. McGraw-Hill Book Company, Inc., New York, New York. 1931. 508 pages. Price \$4.

WESTERN AND ATLANTIC RAILROAD OF THE STATE OF GEORGIA. By James Houston Johnston. Atlanta: Georgia Public Service Commission. 1932. 364 pages. Price \$5.

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# The March of Events

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## Power Company Ordered to File Data on Reported Transfer

THE Clarion River Power Company was ordered by the Federal Power Commission to file within ten days after August 23rd a complete report of the purported sale of its property to the Pennsylvania Electric Company. The company has also been ordered not to sell any of its securities without approval of the commission. This action of the commission came as the result of its conference with state authorities of Pennsylvania following alleged disposal of properties of the Clarion River Power Company without approval of either the Pennsylvania or the Federal Commissions, under which it is licensed. The commission in its statement said that preferred stock outstanding valued at \$4,453,000 was involved. Similar orders

were sent to the Pennsylvania Electric Company.

## Holding Company Survey

THE Federal Power Commission in an advance announcement of the appendix of its forthcoming report on holding companies, in which the chain of control by the top companies is tabulated, calls attention to the "almost universal demand for more safeguards to be thrown around the investors." The facts to be set forth in the report, the commission asserts, possess real value for the lawmakers of Congress, to whom the report is addressed. It is stated that the system of holding company control "affords possibilities and temptations of abuse." It was also conceded that it affords possibilities in the way of efficiency and economy.



## Alabama

### Gas Rate Reduction

AFTER September 1st a new service rate prescribed by the commission was calculated to save Birmingham gas consumers approximately \$44,000 a month, according to the *Birmingham News*. New rates for domestic consumers take into consideration the

number of rooms in a home. New rates were also prescribed for industrial and commercial gas consumption. The rates were described as "very favorable to the small users of gas," the minimum monthly charge being 50 cents with a consumption rate of 80 cents a thousand for the first 10,000 feet of gas used.



## Connecticut

### Mayor Takes Credit for Water Rate Cut.

MAYOR Joseph A. Boyle of Stamford replied to claims made that his administration had not lived up to its campaign promises regarding efforts to secure a reduction in local water rates, that the recent drop in water costs in that city was due to negotiations instituted by him. He further declared

the correspondence dealing with the matter was in his files and open to inspection by any citizen desirous of doing so. Mayor Boyle said that he acted in the matter without "hope of glory or regard," and makes the correspondence public only to refute charges made by political opponents. The mayor's statement was printed in full in the *Stamford Advocate*. The utility whose rates were questioned and revised was the Stamford Water Company.

## District of Columbia

### Engineers Dispute in Phone Rate Case

**B**ATTLING over the extent of property depreciation, the Chesapeake and Potomac Telephone Company pitted William F. Sloan, consulting engineer of Chicago, to rebut statistics introduced by public utilities commission witnesses in current proceedings on telephone rates. Testimony of Sloan was chiefly aimed at statistics advanced by Thomas R. Tate, commission engineer, dealing with the amount of the company's capital account which should be reduced in allowing for depreciation. Tate's testimony, according to the *Washington Times*, indicated that the company should write off for plant depreciation between \$7,000,000 and \$9,000,000, while the company's witness figures that the write-off should be only \$2,600,000. Messrs. Harold E. Doyle and John F. Maury, members of the appraisal committee of the Washington Real Estate Board, were also presented as witnesses on land values by the com-

pany. The company's general auditor, Harry C. Gertz, testified as to the financial condition of the company up to June, 1932.

### Move for Lower Street Light Rates

**T**HE District of Columbia government struck out in a new direction in its quest for economy when a decision was reached to attempt to get a reduction on the city's bill for street lighting. The *Washington Star* reports that the expense of electric lighting during the last fiscal year amounted to \$828,000, and the cost for illumination of municipal buildings cost them an additional \$165,000. Assistant Corporation Counsel William A. Roberts was instructed to prepare an inquiry into the rates charged by the Potomac Electric Power Company for such service.



## Florida

### Rate Agitation in Palm Beach

**T**HE Palm Beach *Times* estimated that approximately 2,500 citizens assembled on August 9th at a meeting called to discuss utility rates. Three members of the city commission spoke attacking utility rates in the city, but at the same time urging the people to maintain their "mental equilibrium." Mayor E. B. Donnell, principal speaker, after reviewing the record of his administration exhorted the citizens not to get "too rabid on the subject." He advised the citizens to concede that the utilities are giving good service and are entitled to a fair return. "Don't accuse the city commission of selling out," he stated. "I cannot see the need for such criticism as that made in the recent gas case. We were offered a reduction by the gas company, and if I had been here I would have voted for it." He pointed out that if the city were to "go to the mat" on the water and light question, it would have to obtain expensive testimony that would cost between \$20,000 and \$30,000, and that the city would be forced to curtail operations in some other direction in order to furnish money for such investigation. He believed that rates could be reduced by negotiation without such ex-

penditure. Commissioner John R. Beacham, who also spoke, cited the successful operation of the municipal plant at Jacksonville and added that, as a nominee for state senate, he would favor the creation of a state utilities commission to assume the cost and burden of controlling rates, which under Florida law is now imposed upon the individual municipalities.

### Tampa Phone Fight Dropped

**T**HE finance committee of the Tampa board of aldermen decided to drop its investigation of rates charged by the Peninsular Telephone Company after Chairman Frazier reported that the state law gave the railroad commission exclusive power to fix telephone rates and that the evidence presented by the company showed that it was not receiving the 8 per cent return on its investment permitted by the state statute.

Confronted by railroad commission law on one side and the telephone company's financial reports on the other, Frazier said the committee could see no justice in taking further testimony.

## Georgia

### Candidate Declares for Rate Cuts

**G**UY O. Stone of Glenwood, candidate for a public service commissioner, has declared that his platform calls for a reduction in electric, gas, and telephone rates, and

promises that if elected he will work night and day to see that such rates are reduced. According to a news item in the *Atlanta Constitution*, Mr. Stone stated that every place he visited the people assured him that reduction in rates on electric power, electric lights, gas service, and telephone rates was being demanded.



## Illinois

### Fight on City Water Rate Cut May Be Dropped

**N**OTWITHSTANDING action by the taxpayers' league which voted to ask a 55 per cent reduction in the city water rates in the city of Decatur, there is a possibility, according to the *Decatur Review*, that the petition calling for the reduction will not be circulated. Former Commissioner W. L. Hamilton, chairman of the league, stated that it would be necessary to make a careful investigation of the effect such a reduction would have on city finances; and that if the league was convinced that the reduction could not be made without hurting the administration, especially by endangering fire and police protection, the project would not be carried out.

### City Power Rates Attacked

**S**T. Charles Chamber of Commerce has presented a petition to the mayor and city council of that city demanding an immediate reduction of 33½ per cent in electric rates so as to cause new industries to seek a location in St. Charles and to give relief to industries already located there. The petition pointed out that the fact that the financial report of the city electric department showed an excess during the last year of income over expenditures amounting to \$56,119.37 was proof that St. Charles citizens were paying too high a price for their electric current. It was also claimed that the electric rates were a hardship on many unemployed and financially pressed citizens during the current depression.



## Indiana

### New Utility Legislation

**D**ECLARING that one of the motivating forces behind a bill (H. 682) passed by the Indiana legislature to permit municipalities to construct and operate public utilities without the jurisdiction of the public service commission was to "open the way for the sale of an unlimited amount of utility equipment to municipalities." Governor Leslie announced that he refused to approve the measure and subjected it to a pocket veto. The governor issued a memorandum, according to the *United States Daily*, setting forth his objections to the measure, including the opinion of the attorney general of the state that a section of the bill barring the commission from jurisdiction would not become effective for five years. The attorney general's opinion also pointed out that the bill provided for the removal of municipal utilities from the regulation of the public service commission.

Local councils would be permitted to operate such utilities without supervision from any state agency whatsoever. The opinion stated that thousands of patrons of municipal plants did not desire that the authority to supervise such plants be removed from the state commission and delegated to local boards. The opinion stated further that the provision of the law permitting the establishment of a second utility by a municipality in municipalities where the existing utility is already giving adequate service was contrary to every sound principle of public regulation. The opinion also objected to a provision which would permit 5 per cent of the voters at any time to require a municipal council to order a special election on the question of acquisition or construction of a public utility with all the expenses incident thereto.

Two other bills (H. B. 655, S. B. 366) requiring rate-making valuations to be no higher than valuation for taxation purposes,

## PUBLIC UTILITIES FORTNIGHTLY

and permitting also existing municipal corporations to lease or buy electric power plants to which they have granted franchises have already been signed by Governor Leslie.

### City Council Falls Out over Rate Fight

THE Gary *Post Tribune* reports that the city council of Gary, overriding contrary recommendations from its public utilities committee, voted to gird itself for a campaign for cheaper electric light and power costs. A tentative decision to this effect was made after a dual report covering more than two months of investigation and study by the public utilities committee of the council, headed by H. A. Green, had been verbally torn to shreds in a lively debate on the floor. Councilman Wilbur Hardaway led the fight

against the report citing specific instances of alleged excessive gas, electric, and water rates charged by the Gary Heat, Light and Water Company. Councilman Green, in defending the report, expressed the fear that the failure of the city of Gary to pay service fees on fire hydrants would lead to disconnection with a consequent boost in insurance rates. Councilman Rowley questioned this position with the following statement:

"It takes a city ordinance to order a hydrant in, and it takes another ordinance to order one out. The mere fact that the company has threatened to disconnect the plugs if we stop paying fees on them doesn't mean that that's what will be done. We can appeal to a higher court, you know."

The council finally compromised by accepting the first part of the report dealing with the electric rate inquiry, but the second section dealing with hydrant fees suspension was turned back to the committee for further study.

## Kansas

### Kansas Gas Rate Case May Be Settled

THE Topeka *Capital* intimates that there is a fair possibility of a peaceful settlement out of court of the gas rate controversy between the Cities Service interests, headed by Henry L. Doherty, and the state administration, headed by Governor Woodring. The newspaper stated that both sides probably would like to get the matter settled without going to Federal courts because neither side is at all certain of its standing on the issues as brought out by recent investigations and findings by the state commission. It was said that the Cities Service group could hardly hope to justify its present 40-cent city gas rate, while the 29½-cent charge by the state would likewise be doomed in Federal court in the opinion of one of the commissioners, Jesse W. Greenleaf. The news item concluded that if it were not for the "saving of face" factor an agreement at 32 cents, which would be a reduction of almost 8 cents, would probably be entered

into, but that neither side cares to "back down" publicly.

### Telephone Strike

HUTCHINSON telephone users commenced a city-wide "strike" starting Thursday, August 11th, against alleged excessive rates charged for telephone service by the Southwest Bell Telephone Company, according to the Hutchinson *News*. The telephone users had a meeting in the city of Hutchinson in August, and laid plans for carrying on the campaign for lower rates. The plans were to be forwarded to the remainder of the 1,200 subscribers who had signed a petition agreeing to remove phones if rates were not reduced. Those signing the petition were asked to offer the company \$1 less than the regular rate charged. If the company refused this, they were to put their money in their pockets and walk out, leaving the next move up to the company. Attorney Eustace Smith of Hutchinson formulated the plans for the "strike."

## Maryland

### Rate Reduction Negotiations Proceed

THE first of anticipated reductions in gas, electric, and telephone rates throughout

the state of Maryland was announced by Harold E. West of the Maryland Public Service Commission in a statement printed in the Baltimore *Sun* disclosing that the commission had secured reduced power rates from the Maryland Light & Power Company

## PUBLIC UTILITIES FORTNIGHTLY

for consumers in Lonaconing district in western Maryland. The lower schedules of 7.47 per cent to residential and 7.22 to commercial users will benefit about 1,500 customers of the power company. The statement was issued following a conference between officials of the power concern and the commission.

Recommendations for substantial reductions in electric and gas rates of the Potomac Edison Company was made public on August 18th in a brief filed with the commission by John Henry Lewin, people's counsel. The company, which supplies gas and electricity at Frederick, Hagerstown, Cumberland, and in other sections of the state, filed a brief in opposition to that of the peoples' counsel. Both proceedings were part of the current program of the commission to obtain by informal negotiations substantial rate reduc-

tions. Chairman West of the commission forecasts a down revision of gas, electric, and telephone rates as well as rates charged by the public utilities as a result of these surveys now being made by the commission. Mr. West said that the commission's survey of the Consolidated Gas and Electric Company and of the Chesapeake and Potomac Telephone Company was expected to be completed early in September and that the entire survey of the state would be completed within a few months.

An editorial in the *Baltimore Post* (Scripps-Howard) strongly supported the program of the public service commission in attempting to obtain such reductions through informal negotiations, pointing out the delays and expense incidental to formal procedure in such cases including the necessity of property valuations.



## Michigan

### Municipal League to Lower Utility Rates Is Formed

**A**N organization of city officials, known as the Public Utilities Committee, to lower utility rates was formed at Lansing, Michigan, at a meeting held in the chambers of the state house of representatives, according to a report in the *Lansing Journal*. David E. McLaughlin, city attorney of Saginaw, sponsored the movement and was chosen chairman, and Thurman B. Doyle of Menominee, also a city attorney, was chosen as secretary. Carl E. Thompson of Chicago, advocate of public ownership of utilities, and former candidate for vice president on the Socialist ticket, addressed the gathering at the afternoon session. The committee decided to hold its next meeting in Lansing, Wednesday, October 12th, in conjunction with the 3-day meeting of the Michigan Municipal League October 12th, 13th, and 14th.

The committee agreed to assist the city of Allegan in its request for a loan of \$300,000 from the Federal Reconstruction Finance Corporation to be used in completing a municipal power plant.

Thompson in his address declared that public ownership of utilities resulted in a direct and immediate saving to taxpayers in addition to creating a revenue producing agency and eliminating the crooked politician. Former Mayor John W. Smith of Detroit also addressed the meeting and likened the great public utility corporations to "great suction systems drawing capital out of Michigan to deposit it in New York, where it is used to enslave the people." Mr. Smith also

declared that the nationally owned street railway of Detroit gave the finest service at the lowest fare of any system in the United States.

A reference bureau is to be maintained in which will be filed all available documents regarding action by cities attempting to take over utilities or regarding actual operation.

### Mayor Retracts Personal Attack

**M**AYOR George Phoenix of Saginaw issued a retraction of any charges contained in the Saginaw city's bill of complaint in a gas rate appeal attributing personal misconduct to Fremont Evans of St. Joseph who was chairman of the arbitration board. Mr. Evans, in a letter to the mayor August 8th, demanded a retraction of charges that the Consumers Power Company had paid for his hotel room and provided him with meals and entertainment while he was in Saginaw for the arbitration. He denied that this was true, or that wrongful influence had been exerted.

The mayor in a letter to Mr. Evans declared that he executed the bill of complaint prepared by City Attorney David E. McLaughlin "in the ordinary routine of official duties" supposing at the time he signed it that the document contained "allegations of fact amply supported by competent evidence." Mr. Evans made a similar demand for retraction upon City Attorney McLaughlin, according to the *Saginaw News*, but Mr. McLaughlin had not announced what his course would be.

## Minnesota

### Valuations Unnecessary for Temporary Fixing

THE Minnesota Railroad and Warehouse Commission is not required by law to determine the value of telephone property devoted to public use before temporary rates can be put into effect, but has authority to fix a temporary schedule to continue in effect until completion of a hearing now in progress and the fixing of permanent rates,

according to an opinion of Attorney General Henry N. Benson.

The opinion was given in response to an inquiry from the commission as to its jurisdiction to make a temporary order reducing the rates in the St. Paul area of the Tri-State Telephone & Telegraph Company. The attorney general held that if the commission finds the present telephone rates are excessive, the charges may be reduced so that "this burden upon the subscribers will be minimized."



## Nevada

### Power Rate Survey in Sparks

THE power rate committee of the city of Sparks appointed by Mayor Adams of that city is making an intense study of the power rate situation, according to a news item in the *Reno Gazette*. The item indicated that the members of the committee may accept recent offers advanced by experts who have flooded the committee with letters expressing willingness to make a trip to Sparks

to study the feasibility of reducing rates and to investigate the cost of construction and operation of a municipally owned plant.

Meetings held by the committee recently have been in the nature of discussions of plans for the campaign they mean to carry out to secure a rate reduction, either by rate cuts by the Sierra Pacific Power Company or by the erection of a municipal plant operating in competition with the privately owned power company.



## New Jersey

### Trenton Officials Demand Rate Reduction

THE Trenton *State Gazette* reports that City Commissioner Page has again sent a demand to Edmund W. Wakelee, vice president of the Public Service Electric & Gas Company, for a lower residential electric rate in the city of Trenton. Mr. Page, who already had in circulation petitions to take the

issue before the board of public utilities commissioners, cited data tending to show that the company was able to pay huge dividends to stockholders. Mr. Page wrote in one part of his letter: "If your company is wealthy enough to pay more than \$10,000,000 in an extra dividend in this period of severe economic depression, you can also make a reduction in rates." Mr. Page's letter proceeded to analyze the financial condition of the electric company.



## New York

### Commission Powers May Be Tested in Court

THE public service commission will welcome the opportunity to take to the courts for settlement the question of its power to prevent the Associated Gas & Electric System from "siphoning" the profits of its dozen operating subsidiaries in New York

state, Chairman Milo R. Maltbie declared in a statement appearing in the *New York Times* August 15th. Mr. Maltbie announced that the commission had refused the petition of the twelve operating companies for a rehearing of the recent proceedings which resulted in a commission order against "service contracts" and other practices under which it was claimed heavy and unnecessary charges were piled up against operating costs of the

## PUBLIC UTILITIES FORTNIGHTLY

Associated subsidiaries. He indicated that the commission would not only seek maintenance of its power in the courts, but would also ask for more stringent legislation next winter. He declared that the forthcoming petition for rehearing was obviously only a preliminary step to an appeal in the courts.

York Public Service Commission that it could not consider such absorption of the tax as a reduction of rates and that it would neither object to it nor require the filing of a new schedule. The board believed that its action will save Iliion consumers approximately \$43,000 a year.

### Municipal Plant May Absorb Tax for Consumers

THE Utica *Observer-Dispatch* observes that the United States Bureau of Internal Revenue has notified the board of light commissioners of Iliion, New York, that it will confirm an agreement reached by representatives with representatives of the local board under which the board of light commissioners will pay the Federal tax for its consumers. The decision by the Bureau of Internal Revenue is said to be a complete reversal of the one previously announced that the user of electric current must pay the tax and the power plant must collect it. The announcement upset the plans of the Iliion and other municipal light commissions who had planned to pay the tax themselves. The Iliion board was also advised by the New

### City Asked to Propose Acceptable Rate

THE public service commission has asked Middletown officials to submit rates which would be sufficiently acceptable to them and to the Middletown consumers to warrant the suspension of the rate case now pending against the Rockland Light & Power Company for one year. Mr. Rosslyn M. Cox, attorney for the complainants, said that he would prepare an acceptable schedule. Mayor Clarence C. VanFleet said that it was the consensus of opinion among the municipal authorities that the public service commission should establish a rate. He pointed out that the city had no verified information on which to base a tentative rate schedule which would be satisfactory to all consumers.

## North Carolina

### Municipal League Seeks Rate Reduction

THE North Carolina Municipal League in its annual meeting at Hendersonville, North Carolina, on August 20th unanimously passed a resolution of its committee on public utilities to the effect that steps should be taken towards securing a reduction of utility rates. Mayor James Taylor of Oxford, in making a report for the committee, pointed out that utility rates had changed in only a few instances since the boom days of 1926 to 1929, and that what was considered a fair return on investments at the time, 8 per cent,

was a great deal more today, owing to the fact that properties of utilities have decreased in value and that the value of a dollar is more today than at that time.

Mr. Taylor stated that present conditions made it imperative that some change be made in connection with the dealings of the state with public utilities. He said that practically every business concern in the state had been forced to retrench in this period, but that public utilities have continued to charge the same rates that they charged during the prosperous era. He believed that some downward adjustment of such rates was imperative in view of the inability of consumers to pay and the current value of the dollar.

## Ohio

### Commission Resumes Columbus Gas Rate Case

THE public utilities commission of Ohio has again resumed its attempt to come to some decision on the Columbus gas rate

case following the consent of Commissioner John W. Bricker to continue his services as commissioner in an effort to get the case "cleaned up." Differences of opinion within the commission itself were brought to a crisis when Commissioner Bricker sent his resignation to Governor White. Following the

## PUBLIC UTILITIES FORTNIGHTLY

receipt of this resignation Governor White refused to accept the same and asked Commissioner Bricker to "clean up his desk" before resigning. It was generally understood that the governor had special reference to the Columbus gas rate case which had been pending some time. Commissioner Bricker consented to continue to serve with the understanding that the rest of the commissioners would cooperate with him in an attempt to come to a decision of pending matters within a reasonable time. According to the Columbus *State Journal*, Commissioner Bricker in a letter to Governor White claimed that the latter's appointee to the commission, E. J. Hopple, chairman, was primarily to blame for delay in coming to a decision in the Columbus rate case. Commissioner Bricker professed willingness to confer with any of his fellow commissioners upon the case if they will only act either by confer-

ring in the opinion that he had already written and filed or by rejecting it, in which case he would issue his minority opinion.

The three commissioners resumed its consideration of the Columbus gas case on August 16th. The Columbus *Citizen* points out that the controversy between the members of the commission carries some political significance because of the fact that Bricker is the Republican candidate for attorney general and Commissioner Geiger is the Republican candidate for supreme court. Chairman Hopple was regarded as Governor White's representative on the commission. The *Citizen* also stated that it was generally understood that Bricker's opinion set a 32-cent gate rate and maintained the present 48-cent rate for Columbus. It was also stated that responsibility for the delay in deciding the Columbus gas rate case was vigorously denied by Chairman E. J. Hopple.



## South Carolina

### Federal Loan Sought to Finance Municipal Plant

ACCORDING to the Augusta (Ga.) *Herald* the city of Columbia, South Carolina, is getting interested in a municipal plant in an effort to see if two birds cannot be killed with one stone. One purpose, it was announced in a report made by W. S. Tomlinson, city engineer, to Mayor L. B. Owens would be to reduce the power and light charges. Another would be to reduce taxes. Mayor Owens had indicated that the project, which he first thought would cost twice as much as a recent estimate, might be financed with a loan from the Reconstruction Finance Corporation although he had some doubt as to whether this could be done. Should this financing program prove impossible, the

mayor said he would favor a bond issue for that purpose when "times get better." The proposal has not been officially presented to the city council.

Mr. Tomlinson's report stated that "if the city can finance the construction of a plant costing approximately \$2,066,000, and secure all power contracts for Columbia and vicinity at present rates, a very substantial profit can be made. Municipally owned power plants are being successfully operated in a large number of cities and in some cases competing with the larger power companies. These plants are not concerned with any urge to inflate values as a means of justifying rates and earnings and are not afflicted with the hallucinations of intangible values."

Construction of a municipally owned power plant would solve Columbia's tax raising problem, Mayor Owens said.



## Wisconsin

### State Hires Utility Experts

THE Milwaukee *Sentinel* reports that two moves were recently made to expedite pending investigations of various Wisconsin public utilities by the commission of that state. First of all the utility committee of the League of Wisconsin Municipalities made public a letter sent to the commission urging it to hire all the accountants and engineers necessary to carry on the investigations. The second move came from the state bu-

reau of personnel announcing examinations to be held on September 2nd for three positions with the public service commission: an electrical engineer to be paid a minimum of \$333 a month; a senior assistant electrical engineer at \$250 a month, and an assistant electrical engineer at \$200 a month. They are to be employed in the statewide investigation of the Wisconsin Telephone Company, the engineering work of which has been done chiefly by a Chicago firm because the commission did not have engineers available.

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# The Latest Utility Rulings

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## Holding Company Must Testify at Federal Trade Probe

THE Electric Bond & Share Company, which for four years has resisted the Federal Trade Commission's effort to examine its financial affairs under authority of a Senate resolution directing an investigation of public utilities, was ordered by Federal Judge John C. Knox to comply with a *subpoena duces tecum* issued by the commission.

The subpoena issued on October 3, 1928, called upon the company to produce its vouchers and ledgers showing its operating expenses. The company and its officials had refused to heed the subpoena and to answer questions on the ground that the commission had no jurisdiction.

The court's decision was preceded by an opinion handed down in the same case on July 18, 1929, when objections of the company to the commission's subpoenas for documents were sustained, and other objections interposed to the pertinent and competent questions propounded by the commission were overruled.

The court assumed that the company, in part at least, was engaged in interstate commerce, saying in this connection, that "if respondents wish to contest the propriety of this assumption, the matter will have to go to a master; or if petitioner (Federal Trade Commission) wishes an adjudication to the effect that the intrastate business of the Electric Bond and Share Company is so intimately associated and connected

with interstate commerce that all the company's activities are subject to the jurisdiction of the commission, a reference will be required to establish that fact."

The commission and the company then agreed to the appointment of a master who was subsequently appointed January, 1930. The parties came to an agreement upon the facts, a stipulation having been signed in October, 1930.

The court's most recent order specifically directed the company and certain officials of the company to answer all questions relating to the cost to the Electric Bond and Share Company of such services as it rendered to the operating company in return for the payment of a fee based upon gross earnings; to the cost of rendering purchasing services which result in interstate movements of materials and supplies to or from any of its subsidiaries, for which a separate fee is charged; and to the cost of rendering any services to subsidiaries engaged in the interstate transmission of electricity or gas, for which a separate fee is charged.

The court ruled against the commission in its request that the company be required to produce the books showing the operating costs and other requested data, although the witnesses, who are officials or employees of the company, are directed to answer all questions on that subject. *Federal Trade Commission v. Electric Bond & Share Co.*



## Federal Court Restrains Oregon Commissioner's Rate Order

THE first rate order of Oregon's one-man commission to get into the Federal courts has been decided, for the

time being, at least, against the commissioner. In June, 1931, the Pacific Northwestern Public Service Company,

## PUBLIC UTILITIES FORTNIGHTLY

operating a street railway system in the city of Portland, filed a complaint in a Federal district court against the alleged confiscatory order reducing its rates from a 10-cent fare to a 7-cent fare. A special master, appointed by the Federal court, found that the fare, as fixed by the commission, would result in an annual loss of revenue of not less than a half million dollars. The court, consisting of Federal Judges McNary, Sawtelle, and Fee, has recently sustained the master's report against the objection of the commission and issued a permanent injunction restraining the enforcement. The opinion rendered by Judge McNary pointed out that the company's net earnings were 5.47 per cent in 1925, 4.44 per cent in 1926, 3.53 per cent in 1927, 2.36 per cent in 1928, 1.41 per cent in 1929, 1.34 per cent in 1930, and .61 per cent in the first half of 1931. These returns were based upon a valuation of approximately \$14,000,000, found by the former public service commission of Oregon in 1916, plus certain additions in value found by a special master of about \$4,000,000.

The special master found that if the rates ordered were put into effect, the

fares would be reduced approximately 25 per cent while the traffic would probably be increased approximately 12 per cent and that there would be involved an annual loss of approximately one-half million dollars. The commission objected on the ground that its order was experimental and should not be enjoined until it had a fair test. The court's opinion conceded that in certain border-line cases such an experiment might be warranted in order to determine whether the rates really would or would not result in confiscation. The case at bar, however, the court held, was not a border-line case, since the evidence showed that during an experimental test period of even six months, the resultant loss to the company would be not less than a quarter of a million dollars. Under such circumstances the court felt that it was not warranted in permitting an "experimental test," and held that the order was confiscatory. It was said that the effect of a confiscatory order is not avoided by the fact that the commissioner retains jurisdiction pending further investigation to determine the result. *Pacific Northwest Public Service Co. v. Thomas.*



### Alabama Commission Investigates Three Holding Companies

THE Alabama commission has announced the completion of its inquiry into the reasonableness of fees paid by two operating public utility corporations to their respective holding companies and discontinued an order restraining these companies from payment of such fees pending an investigation. Utilities affected by the commission's order are the Alabama Power Company and its holding company, the Commonwealth & Southern Corporation of New York, and the Southern Bell Telephone & Telegraph Company, and its holding company, the American Telephone and Telegraph Company.

The general order on which the inquiry was based was issued on July 13th and forbade the payment of fees or

charges to any holding company by a utility in the state for any services rendered until after "reasonable proof" had been made before the commission "that services have been rendered and that the amount claimed therefor is not in excess of the reasonable value of the services."

The order was inspired by a report to the commission of alleged irregularities in the payments of large amounts by the Birmingham Gas Company to its holding company, the American Gas and Power Company, where the commission found there was "an absence of arms-length bargaining" in such transactions.

Investigations of the commission into the transactions between the Birming-

## PUBLIC UTILITIES FORTNIGHTLY

ham Gas Company and the American Gas and Power Company under their former managements had not been completed at the time the opinion was handed down in the cases of the Alabama Power Company and the Southern Bell Telephone and Telegraph Company. On August 22nd, however, the commission issued an order directing the Birmingham Gas Company to reduce its rates for the "substantial users" of gas and to provide an optional rate for domestic service under which customers could obtain gas service through one meter for all domestic uses including space heating.

The rates for small users were not changed, the commission stating that those charges were "very favorable to the small users" and that they "enjoyed the lowest rates that we know of for similar domestic and commercial service." The rate reduction was made in an intermediate report and order in the proceeding instituted by the commission in the form of a citation to the Birmingham Company to show cause why the utility should not be restrained from paying dividends unless and until earned and for other purposes.

The report of August 17th, however, virtually absolved the Alabama Power Company and the Southern Bell Telephone and Telegraph Company of any improper or unreasonable conduct in their relations with their respective

parent organizations. The opinion in the case of the Alabama Power Company stated:

"What is said in this report is not said with any special reference to this respondent (the power company) whose service contract and plan appear in some respects to be fairer and more fairly organized than those which we have found to exist in other instances."

The commission made clear, however, that it had neither the staff nor funds that would enable it to examine the books and records to "see that the job is being done in the right sort of way."

Upon answer of the respondent, the commission's opinion added:

"We cannot say that the amount of money being paid out by the respondent for said services rendered and to be rendered under said service contract are so disproportionate to the services rendered therefor as to be tainted with fraud or bad faith, or gross mismanagement to the detriment of the holders of the securities of such company, or to the injury of the ratepayers."

The commission declared, however, that neither the report nor the order issued therein was intended to constitute any finding as to the reasonableness or unreasonableness of the fees charged or moneys paid or to be paid under the said service contract. *Re Southern Bell Telephone & Telegraph Co.; Re Alabama Power Co.; Re Birmingham Gas Co.*



### Appeal of Decision Limiting Commission's Power to Prove Sale Is Refused

**W**HEN the New York State Electric Corporation and the New York Electric Company filed a joint petition with the New York commission for authority, under New York law, permitting the former to issue 38,250 shares of common stock, without par value, to be acquired by the latter corporation, the New York commission refused on the ground that the petition was in effect seeking approval for acts which offended the public policy of the

state and violated the spirit, if not the letter, of § 70 of the Public Service Commissions Law.

The appellate division of the New York supreme court construed the statute otherwise and held that the commission's refusal of consent on that ground was arbitrary and capricious. An appeal was taken to the highest court of the state, which has refused to review the decision of the appellate division—in view of the fact the com-

## PUBLIC UTILITIES FORTNIGHTLY

mission has still to determine whether or not in this particular case there is reason for withholding the consent. Under the New York state law an order of the lower court is not appealable where questions are still open for decision by the original tribunal. The difference of opinion between the commission and the appellate division apparently was limited to a construction of § 70 of the Public Service Commissions Law.

The highest court held that even assuming the correctness of the appellate division's position in holding that the refusal of consent based solely on the

grounds stated was arbitrary and capricious, a careful reading of the majority opinion of the appellate division showed that it did not decide nor attempt to decide that perhaps reasons of greater weight might not exist which would give a firmer ground for refusal. The question continues to rest, therefore, within the jurisdiction of the public service commission and the order of the appellate division was held not to destroy or limit the discretion of the commission to be exercised as the circumstances of the case might warrant. The appeal was dismissed. *Re New York State Electric Corporation.*



### Sale of Associated Gas and Electric Securities Forbidden in Pennsylvania

THE sale of bonds of the Associated Gas & Electric System and of the Pennsylvania Electric Company has been forbidden in the state of Pennsylvania by an order issued by the state securities commission. The commission's action was taken, according to the statement accompanying the order, because of an investigation now being conducted with reference to alleged violations of the Pennsylvania Securities Act by the corporations involved and

because of the recent order of the Federal Power Commission concerning the Clarion River Power Company (described on page 346, *ante*, of this issue).

Referring to the Pennsylvania order, Chairman George Otis Smith of the Federal Power Commission stated that it was "further evidence of the effective cooperation between state officials and the Federal government to protect the public." *Re Associated Gas & Electric System.*



### South Carolina Utility Ordered to Defend Rate Cut

FOLLOWING a report of its chief engineer, A. R. Wellwood, to the effect that the Carolina Light & Power Company had earned during 1931 between 8.97 per cent return and 11.56 per cent return, the state railroad commission of South Carolina has ordered the company to show cause on September 14th why it should not reduce its rates for electric service in South Carolina by approximately 26 per cent. The order was issued on recommendation of the commission's Electrical Utilities Division, and follows similar action against the Broad River Power Company, which was directed to show cause why its

rates should not be reduced by 22 per cent. The latter company has protested the proposed reduction, and a hearing has been set for September 20th.

In the case of the Carolina Power & Light Company, the commission's electrical utilities division reported that it was necessary to allocate the property used and useful in the state of South Carolina because of the fact that the utility was engaged in business in other states. The opinion stated:

"The generating facilities of the Carolina Power & Light Company are practically all located in North Carolina. However, it purchases more power in South